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RECORD, CASE No. 14,181.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

TERM No., 301.

GEORGE L. COREY, AMOS B. COREY, CHARLES J. COREY, WARREN W. COREY, AND IRA E. SPAULDING, APPELLANTS,

vs.

CATHERINE R. TOLAND.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF UTAH.

FILED SEPTEMBER 27, 1890.

RECORD, CASE No. 14,181.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

TERM No., 201.

GEORGE L. COREY, AMOS B. COREY, CHARLES J. COREY, WARREN W. COREY, AND IRA E. SPAULDING, APPELLANTS,

vs.

CATHERINE R. TOLAND.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF UTAH

INDEX.

	Original.	Print.
Transcript from district court	1	1
Complaint	1	1
Answer and cross-complaint	11	6
Demurrer to cross-complaint	24	13
Order sustaining demurrer	24	14
Findings of fact	25	14
Conclusions of law	31	17
Judgment and decree	32	18
Statement on motion for new trial	32½	19
Notice of intention to move for new trial	32½	19
Testimony of Catherine R. Toland	33	20
Josiah M. Ferrin	52	34
Isaac L. Clark	65	44
John N. Browning	71	47
Catherine R. Toland	73	49
A. J. Chamberlain	73	49

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	Original.	Print.
Testimony of Catharine R. Toland (recalled)	75	50
Alfred H. Nelson	78	52
Charles J. Corey	86	57
Amos B. Corey	87	58
James N. Kimball	89	59
Specification of particulars in which evidence is insufficient	92	61
Specification of errors of law	93	61
Order overruling motion for new trial	95	62
Judge's certificate to statement	96	62
Order granting time to appeal	97	63
Notice of appeal	98	63
Order dispensing with printing record	99	64
Clerk's certificate	100	64
Order taking cause under advisement	101	64
Judgment	101	65
Order granting stay on application for appeal, &c	102	65
Order submitting request for findings	102	65
Order granting further stay	103	65
Findings of fact	104	66
Order denying motion to strike affidavits of value from files	112	70
Order granting appeal	112	70
Opinion	113	71
Citation and proof of service of same	120	74
Bond	122	75
Affidavit of Warren W. Corey as to value	124	76
John Keck as to value	126	77
Clerk's certificate	128	77
Assignment of errors	129	78

1 TERRITORY OF UTAH:

In the District Court for the First Judicial District.

CATHERINE R. TOLAND, Plaintiff,
vs.
GEORGE L. COREY, AMOS B. COREY, WARREN W. COREY, CHARLES J. COREY, and IRA E. SPAULDING, Defendants.

The plaintiff complains and alleges:

That she is the widow of William Toland, deceased, who departed this life on or about the 28th day of January, A. D. 1881; that previous to and at the time of her marriage with the said William Toland she was the widow of Patriot L. Crawford, who had departed this life on or about the year 1868, leaving as the issue of the marriage between the plaintiff and the said Patriot L. Crawford three children, viz., Isaac Augustus Crawford, Minnie Crawford, and Frank Crawford; that this plaintiff is the daughter of Mary Clark, deceased; that the said Mary Clark, the mother of this plaintiff, died in the city of Ogden, in the county of Weber and Territory of Utah, on or about the 12th day of December, A. D. 1878, testate, and leaving both real estate and personal property in said city of Ogden.

That the will of the said Mary Clark was duly admitted to probate by the probate court of the said county of Weber on or about the 24th day of January, A. D. 1879.

That in and by the terms of said will, among other things, the following-described real estate, to wit, a part of lot three
2 (3), in block thirty-one (31), of plat "A," Ogden City survey, viz: Beginning at the southwest corner of said lot three (3), thence north sixty-three (63) feet, thence east fifty (50) feet, thence north twenty (20) feet, thence east to the east line of said lot, thence south eighty-three (83) feet, thence west to the place of beginning, was devised as follows, to wit: An undivided one-third part thereof to Isaac Clark, an undivided two-thirds thereof to Isaac Augustus Crawford and Frank Crawford, with the use of the said undivided two-thirds part thereof to this plaintiff, the mother of the said Isaac Augustus Crawford and Frank Crawford, for and during her natural life.

That on the 16th day of March, A. D. 1880, the said William Toland, then the husband of this plaintiff, purchased of and from the said Isaac Augustus Crawford his said interest in the estate of the said Mary Clark and in and to the land and real estate devised in and by said will of the said Mary Clark, paying to him, the said Isaac Augustus Crawford, the sum of one thousand dollars therefor, and on said 16th day of March, A. D. 1880, the said Isaac Augustus Crawford, for and in consideration of the said sum of one thousand dollars to him in hand paid, made, executed, acknowledged, and delivered to the said William Toland a good and sufficient warrantee deed of all his said interest under and by said will in and to

the land and real estate so devised by the said will of the said Mary Clark as aforesaid.

That on the 26th day of November, A. D. 1880, the said William Toland, then the husband of this plaintiff, for a good and valuable consideration therein expressed, and him, the said William Toland, moving, and also in consideration of the love and affection
3 he bore towards this plaintiff, his said wife, made, executed, and acknowledged and delivered to this plaintiff a good and sufficient deed of the said interest in and to the said real estate which he had purchased of the said Isaac Augustus Crawford as aforesaid.

That on the third day of March, A. D. 1881, the probate court of the said county of Weber made and entered a decree of distribution of said real estate belonging to the said estate of the said Mary Clark, deceased, and in and by said decree distributed and apportioned said real estate as follows, to wit: An undivided one-third part thereof to the said Isaac Clark, and an undivided two-thirds thereof to the said Isaac Augustus Crawford and the said Frank Crawford, and a life interest in said undivided two-thirds thereof to this plaintiff.

That commissioners were appointed to partition said real estate between the said Isaac Clark and the said Isaac Augustus Crawford and the said Frank Crawford, which said commissioners reported their partition and division to the probate court of said county of Weber on the 4th day of March, A. D. 1881, and on said last-named day the said report of the said commissioners was confirmed by the said probate court.

That in and by said partition and division there was set apart from the real estate first above described, as the portion coming to the said Isaac Augustus Crawford under and by virtue of the provisions of said will of the said Mary Clark, the portion bounded and described as follows, to wit: A part of lot three (3), in block thirty-one (31), of plat "A," Ogden City survey: Beginning at the southwest corner of said lot and running thence north twenty-one (21) feet; thence north 62 feet; thence east two hundred and twenty-five feet (225); thence east one hundred and five (105) feet;
4 thence south eighty-three (83) feet; thence west three hundred and thirty (330) feet to the place of beginning, with the buildings and improvements thereon.

This plaintiff further alleges that at the time of the death of her said husband, William Toland, they were residing on the land last above described; that this plaintiff has continued to reside thereon ever since and is now residing thereon.

This plaintiff further alleges that for some weeks prior to and on the 29th day of January, A. D. 1884, the said Isaac Augustus Crawford importuned, solicited, and requested this plaintiff to assist him to raise and negotiate a small loan of money to put into a business in which he was then engaged in the said city of Ogden, and that upon the earnest solicitation and repeated requests and importunities of the said Isaac Augustus Crawford she finally consented to give a mortgage upon the real estate last above described to secure

such a loan, and that in pursuance thereof, and not otherwise, on said last-named day she and the said Isaac Augustus Crawford made, executed, and delivered to one H. G. Doon, of Terrace, Utah, a note for the sum of three hundred and fifty dollars, payable on the 29th day of January, A. D. 1885, with interest at one and one-quarter per centum per month, and that to secure the payment of said note and interest she and the said Isaac Augustus Crawford, on said 29th day of January, A. D. 1884, made, executed, acknowledged, and delivered to the said H. G. Doon a mortgage upon the real estate last above described; that the said Isaac Augustus Crawford received the whole of the said three hundred and fifty dollars so loaned of the said H. G. Doon and, as this plaintiff is informed and believes, used the same in his said business.

5 The plaintiff upon information and belief alleges that the said Isaac Augustus Crawford, on the 20th day February, A. D. 1884, made, executed, and delivered to the said H. G. Doon another mortgage upon the real estate last above described to secure the payment of one hundred and fifty dollars, with interest at the rate of one and one-quarter per centum per month, and that the same was made due and payable on the 29th day of January, A. D. 1885.

And this plaintiff upon like information and belief alleges that the said Isaac Augustus Crawford, on the 6th day of June, A. D. 1884, made, executed, and delivered to the said H. G. Doon another mortgage upon the real estate last above described to secure the payment of one hundred and seventeen and $\frac{50}{100}$ dollars in six months from the date thereof, with interest at the rate of one and one-quarter per centum per month.

That the two mortgages last above mentioned were each given by the said Isaac Augustus Crawford without the knowledge, consent, or acquiescence of this plaintiff, and that she never received any part or portion of the consideration thereof, and that she did not know or suspect the existence of the said mortgages until long after they were given.

This plaintiff upon information and belief alleges that the said Isaac Augustus Crawford became indebted to the defendants, who were then doing business in the said city of Ogden under the firm name and style of Corey Brothers, and with the purpose of securing said indebtedness the said Isaac Augustus Crawford made, executed, and delivered to the defendants, under their said firm name, but without the knowledge, consent, or acquiescence of this plaintiff, two mortgages upon said last above described real estate, dated respectively June 27th, 1884, and December 7th, 1884, and that on

6 the 4th day of August, A. D. 1885, the said defendants satisfied and cancelled said mortgages of record.

And this plaintiff upon information and belief alleges that the said defendants knew at the time that they satisfied and cancelled said mortgages that the said Isaac Augustus Crawford had no right, title, or claim in and to the real estate described in said mortgages, and that he could not mortgage or incumber the same, and that it

was the knowledge of this fact that caused and induced the defendants to cancel said mortgages.

And this plaintiff upon information and belief further alleges that the defendants, previous to August 4th, A. D. 1885, procured from the said H. G. Doon an assignment of the three mortgages hereinbefore described as having been made and given to him, the said H. G. Doon; and upon like information and belief this plaintiff alleges that the said defendants knew before and at the time they procured the assignment to them of the said mortgages that the said Isaac Augustus Crawford had no interest in or title to the said real estate described in said mortgages at the time he made and executed said mortages, and that the said defendants procured the assignment of said mortgages with full knowledge that the said Isaac Augustus Crawford had and held no title to or interest in the said real estate, and that said Isaac Augustus could not lawfully mortgage or incumber the same, and that the defendants had actual knowledge of the deed from the said Isaac Augustus to the said William Toland, and also of the deed from the said William Toland to this plaintiff.

This plaintiff further alleges that for some time previous to January 8th, A. D. 1886, different members of the said firm of
7 Corey Brothers, the defendants, together with their attorneys, made frequent visits to this plaintiff and endeavored to persuade and induce her to sign a deed of said real estate which they had prepared, conveying the same to the defendants, but that she constantly refused and declined so to do, and that on or about January 28th, A. D. 1886, the defendants and their attorneys told this plaintiff that unless she signed a deed they would foreclose all the mortgages given to the said H. G. Doon; that it would take all of her land and the buildings thereon from her, and that she would be turned into the street houseless and homeless, and that the mortgages given by the said Isaac Augustus were good and valid against said land, and that as a further inducement for this plaintiff to sign said deed the defendants promised and agreed to move the building in which she was then living on said land to any place on the land apportioned to Frank Crawford which she might select, and they again threatened her that unless she would sign said deed that they could and would take the land and the buildings, and that she would have no home or place to go to; and this plaintiff further alleges that at the time immediately above mentioned she asked and besought the defendants to give her a little time to get advice and look about and see what she should do, but the defendants refused to give or allow her time for such purpose, but insisted upon a decision and answer at once.

This plaintiff further alleges that at the time last above mentioned she was in poor health and weak and nervous from overwork in her effort to support and maintain herself at her trade of dressmaking, and, being influenced and controlled by the importunities and threats of the said defendants, and without any
8 legal advice as to what her legal rights were in the premises, and without knowing herself what those rights were, and

believing that the defendants and their attorneys had told her the truth and had correctly informed her as to the legal effect of the mortgages given by the said Isaac Augustus Crawford to the said H. G. Doon, and being solely influenced by the importunities and threats of the said defendants, and believing that the said real estate was and could be legally held for the payment of the said indebtedness of the said Isaac Augustus Crawford, she finally signed a deed conveying the said real estate to the defendants, and she alleges that she told the officer taking the acknowledgment, who was at that time an attorney for the defendants, that she did not execute the same freely or voluntarily, but that she was forced to do so by the threats and importunities of the defendants.

This plaintiff further alleges that she never delivered said deed to the defendants or any one of them, and that she never authorized any other person to deliver said deed to said defendants or any one of them for her, nor did she ever deliver it to any person for the said defendants or any one of them.

This plaintiff further alleges that the consideration mentioned in said deed last above mentioned is twelve hundred and thirty-six and $\frac{66}{100}$ dollars, and that she never received any part or portion thereof, and that she does not know how said amount was arrived at nor upon what it was or is based, and she alleges that said sum mentioned in said last above mentioned deed was at the time said deed is dated and is now a grossly inadequate price for said real estate without any buildings thereon, and upon information and belief she alleges that said real estate, without any buildings
9 thereon, is reasonably worth the sum of twenty-five hundred dollars; and this plaintiff further alleges that said real estate is all that she has or ever had of the estate once belonging to her said husband, William Toland.

This plaintiff further alleges that she is unable to raise the amount of the said note and mortgage made, executed, and delivered by her and the said Isaac Augustus Crawford to the said H. G. Doon, as hereinbefore set forth; that, with the title to the said property in the condition it now is and as hereinbefore set forth, she can find no one willing to loan a sufficient amount of money thereon for her to make a tender of the amount of said mortgage to said defendants and she has no other means of raising it; but she acknowledges her liability on said note and mortgage, and that said mortgage is a valid lien on said land.

Wherefore the plaintiff prays the judgment of this court that the said defendants be decreed by a judgment and order of this court to reconvey, by good and sufficient deed or deeds (subject only to said mortgage for three hundred and fifty dollars given by this plaintiff and Isaac Augustus Crawford to H. G. Doon), the real estate last above described to her, and that she may have such further and other relief in the premises as the nature of her case may require and as may be agreeable to equity, and for costs of suit.

A. R. HEYWOOD AND
P. H. EMERSON,
Att'ys for Plaintiff.

TERRITORY OF UTAH, }
County of Weber, } ss:

Catherine R. Toland, being duly sworn, deposes and says:
10 I am the plaintiff in the above-entitled action. I have heard read the foregoing complaint and know the contents thereof, and the same is true of my own knowledge except the matters therein stated to be on information and belief, and as to those matters I believe it to be true.

CATHERINE R. TOLAND.

Subscribed and sworn to before me this 23d day of June, A. D. 1887.

[SEAL.] P. H. EMERSON,
Notary Public.

(Endorsed: No. 1311. Title of court and cause. Complaint. Filed June 24, 1887. H. H. Henderson, clerk. A. R. Heywood & P. H. Emerson, att'ys for plaintiff.)

11 *Answer.*

(Title of Court and Cause.)

Come now the defendants above named and, answering the complaint on file in the above-entitled action against them—

Admit upon their information and belief that plaintiff is the widow of William Toland, deceased, who departed this life on or about the 28th day of January, A. D. 1881, and that previous to and at the time of her marriage with the said William Toland she was the widow of Patriot L. Crawford, who departed this life on or about the year 1868, leaving as the issue of said marriage between plaintiff and said Patriot L. Crawford three children, viz., Isaac Augustus Crawford, Minnie Crawford, and Frank Crawford, and that the plaintiff is the daughter of Mary Clark, deceased, and that the said Mary Clark, the mother of the plaintiff, died in the city of Ogden, in the county of Weber and Territory of Utah, on or about the 12th day of December, A. D. 1878, testate, and leaving both real estate and personal property in said city of Ogden, and that the will of the said Mary Clark was duly admitted to probate by the probate court of the said county of Weber on or about the 24th day of January, A. D. 1879, and that in and by the terms of said will, among other things, the following-described real estate, to wit, a part of lot three (3), in block thirty-one (31), of plat "A," Ogden City survey, viz: Beginning at the southwest corner of said lot three (3), thence north sixty-three (63) feet, thence east fifty (50) feet, thence north twenty (20) feet, thence east to the east line of said lot, thence south eighty-three (83) feet, thence west to the place of begin-
12 ning, was devised as follows, to wit: An undivided one-third part thereof to Isaac Clark, an undivided two-thirds thereof to Isaac Augustus Crawford and Frank Crawford, with the use of the said undivided two-thirds thereof to the plaintiff during her

natural life, and that on the third day of March, A. D. 1881, the probate court of the said county of Weber made and entered a decree of distribution of said real estate belonging to said estate of the said Mary Clark, deceased, and in and by said decree distributed and apportioned said real estate as follows, to wit: An undivided one-third part thereof to the said Isaac Clark and an undivided two-thirds thereof to the said Isaac Augustus Crawford and the said Frank Crawford and a life interest in the said undivided two-thirds thereof to the plaintiff, and that commissioners were appointed to apportion said real estate between the said Isaac Clark and the said Isaac Augustus Crawford and the said Frank Crawford, which said commissioners reported their partition and decision to the probate court of the said county of Weber on the 4th day of March, 1881, and on said last-named day the said report of said commissioners was confirmed by said probate court, and that in and by said partition and division there was set apart from the real estate first above described as the portion coming to the said Isaac Augustus Crawford under and by virtue of the provisions of said will of the said Mary Clark, the portion described and bounded as follows, to wit: A part of lot three (3), in block thirty-one (31), of plat "A," Ogden City survey: Beginning at the southwest corner of said lot and running thence north twenty-one (21) feet, thence east two hundred and twenty-five (225) feet, thence north sixty-two (62) feet, thence east one hundred and five (105) feet, thence south eighty-three (83) feet, thence west three hundred and thirty (330) feet to the place of beginning, with
13 the buildings and improvements thereon, and that on the 16th day of March, A. D. 1880, the said William Toland, then the husband of the plaintiff, purchased of and from the said Isaac Augustus Crawford his said interest in the estate of the said Mary Clark and in and to the land and real estate described in and by said will of the said Mary Clark, paying to him, the said Isaac Augustus Crawford, the sum of one thousand dollars therefor, and that on the said 16th day of March, A. D. 1880, the said Isaac Augustus Crawford, for and in consideration of said sum of one thousand dollars to him in hand paid, executed, acknowledged, and delivered to the said William Toland a good and sufficient warranty deed of all his said interest under and by said will in and to the land and real estate so devised by the said will of the said Mary Clark, as aforesaid, and that on the 26th day of November, A. D. 1880, the said William Toland, then the husband of the plaintiff, for a good and valuable consideration therein expressed and to him, the said William Toland, moving, and also in consideration of love and affection he bore towards the plaintiff, his said wife, made, executed, and acknowledged and delivered to the plaintiff a good and sufficient deed of the said interest in and to the said real estate which he had purchased of the said Isaac Augustus Crawford as aforesaid; and said defendants admit that plaintiff and the said Isaac Augustus Crawford made, executed, and delivered to H. G. Doon the note and mortgage described in the complaint as made and delivered by them, and that the said Isaac Augustus Crawford made, executed, *executed* and delivered to the said H. G. Doon the other two mortgages in

the complaint mentioned and described as made, executed, and delivered by him to said Doon.

14 But as to the following allegations of said complaint, to wit, that the two mortgages last above mentioned were each given by the said Isaac Augustus Crawford without the knowledge, consent, or acquiescence of this plaintiff, and that she never received any part or portion of the consideration thereof, and that she did not know or suspect the existence of said mortgages until long after they were given, defendants say that they have no information or belief sufficient to enable them to answer the same, and therefore and upon that ground they deny that the two mortgages last above mentioned were each or either of them given by the said Isaac Augustus Crawford without the knowledge, consent, or acquiescence of the plaintiff, or that she never received a part or portion of the consideration thereof, or that she did not know or suspect the existence of said mortgages until long after they were given.

Defendants admit that they were doing business at Ogden city and under the name and in the manner alleged in the complaint, and that the said Isaac Augustus Crawford became indebted to them in their said business, and that he made, executed, and delivered to them the mortgages mentioned in the complaint as made by the said Crawford to them to secure said indebtedness; that as to the allegation that said mortgages were made, executed, and delivered to them without the knowledge, consent, or acquiescence of the plaintiff, defendants say that they have no information or belief sufficient to enable them to answer the same, and therefore they deny that said mortgages or either of them were made, executed, and delivered without the knowledge, consent, or acquiescence of the plaintiff.

Defendants admit that they, on the 4th day of August, A. D. 1885, satisfied and cancelled their said mortgages of record,

15 but they deny that they or either of them, at said time or at any other time, knew or suspected that the said Isaac Augustus Crawford had no right or title or claim in or to the real estate described in them, or that he could not mortgage or incumber the same, or that it was the knowledge of that fact that caused or induced them to cancel said mortgages, but, on the contrary, they allege that they cancelled and satisfied said mortgages solely on the solicitation of said plaintiff and upon her representation that if they would do so that she would pay them the amount of their indebtedness mentioned in said mortgages as soon as said satisfaction and cancellation was made, and that they made said satisfaction and cancellation relying upon said representation and upon no other ground.

Defendants deny that they or either of them, previous to or on August 4th, A. D. 1885, or at any other time, procured from said H. G. Doon, or from any other person, an assignment of the mortgages described in the complaint as executed to him, or of either of them, and defendants deny that they or either of them, on August 4th, A. D. 1885, or at any other time previous to said date, knew or had reason to believe that the said Isaac Augustus Craw-

ford had no interest in or title to said real estate described in said mortgages mentioned in the complaint at the time he made, executed, or delivered said mortgages or either of them, and they deny that they or either of them, or the said Doon, until long after the execution of the last of the mortgages described in the complaint by the said Isaac Augustus Crawford, had full or any knowledge or notice of any character or description that the said Isaac Augustus Crawford had or held no title to or interest in the said real estate, or that he could not lawfully mortgage or incumber the same, or that they or either of them, or said Doon, had actual or any
16 notice of the said deed from Isaac Augustus Crawford to the said William Toland, or of said William Toland to the plaintiff, or of either of them, but, on the contrary, they allege that they and the said Doon took said mortgages from and paid to and advanced to the said Isaac Augustus Crawford the consideration expressed in said mortgages and in each of them without knowledge, notice, or information of the title or claim of said William Toland or of said plaintiff.

Defendants deny that they or either of them, at the time or times alleged in the complaint or at any time, with or without their attorneys or attorney, made frequent or any visits to or endeavored to persuade or induce her to sign a deed of said real estate which they or either of them had prepared, or any deed conveying said real estate to them or either of them.

Defendants deny that they or either of them or their attorneys or attorney, on or about January 23rd, A. D. 1886, or at any time, told the plaintiff that unless she signed said deed, or any deed, they or either of them would foreclose any or all of the mortgages given to the said H. G. Doon, or that *it* would take all of her land or the buildings thereon from her, or that she would be turned into the street houseless or homeless. Defendants admit that they, on or about the 23rd day of January, A. D. 1886, told plaintiff that the said mortgages given by the said Isaac Augustus Crawford were good and valid against said land, and that they promised and agreed that they would, as a part consideration for said deed (the deed to them mentioned in the complaint), move the buildings in which she was then living on said land to any place on the land apportioned to Frank Crawford, but they deny that they or either of them
17 again or ever threatened that unless she would sign said deed *said deed* or any deed that they could or would take the land or the buildings or either of them, or that she would have no place or home to go to, or that they then or ever made any threats of any kind whatever.

And defendants deny that plaintiff, at the time last aforesaid or at any time, asked or besought them or either of them to give her a little or any time to get advice or look about her, or see what she could do, or for any other purpose, or that they or either of them, then or there or at any time or place, refused to give or allow her time for such purpose, or insisted upon a decision or answer at once; but defendants allege on their information and belief that plaintiff had then, and for many months prior thereto had had, counsel, ad-

vice, and instruction relative to said mortgages, indebtedness, and said deed.

As to the following allegations in said complaint, to wit, "This plaintiff further alleges that at the time last above mentioned she was in poor health and weak and nervous from overwork in her effort to support and maintain herself at her trade of dressmaking," defendants say that they have no information and belief sufficient to enable them to answer the same or either of them, and therefore and upon that ground they deny each and every of said allegations.

Defendants admit that the plaintiff, on the 23rd day of January, A. D. 1886, signed a deed conveying to them the real estate described in said mortgages, and described as follows, to wit, a part of lot three (3), in block thirty-one (31), in plat "A," Ogden City survey: Beginning at the southwest corner of said lot, running thence north twenty-one (21) feet, thence east two hundred and twenty-five
18 (225) feet, thence north sixty-two (62) feet, thence east one hundred and five (105) feet, thence south eighty-three (83) feet, and thence west three hundred and thirty (330) feet to the place of beginning; but defendants deny that the plaintiff in signing said deed was influenced or controlled by the importunities or threats of the defendants or either of them, or that they or either of them ever importuned or threatened her in any way whatever, or that she signed the same without legal advice as to what her legal rights were in the premises, or without knowing herself what they were, and they deny that the plaintiff was solely or at all influenced to sign said deed by any importunities or threats of them or either of them, or that they ever importuned or threatened her in that behalf or in any other matter.

Defendants deny that plaintiff told the officer taking the acknowledgment of said deed that she did not execute the same freely or voluntarily, or that she was forced to do so by the threats or importunities of the defendants or either of them, but, on the contrary, defendants allege that she signed and acknowledged said deed freely and voluntarily for the uses and purposes in it mentioned.

Defendants deny that plaintiff did not deliver said deed to them or any one of them, or that she never authorized any other person to deliver the same to them or any one of them for her, or that she did not deliver it to any other person for the defendants, but, on the contrary, defendants allege that the plaintiff signed said deed on the 23rd day of January, A. D. 1886, at her house, in the presence of Josiah M. Ferrin and Amos B. Corey, James N. Kimball, and others, and, after acknowledging the same, handed it to the officer who took the acknowledgment, who then and there,
19 in the presence of the said plaintiff and said other parties, delivered the same to said Amos B. Corey, one of the defendants, who then and there took the same, and that the plaintiff made no objection to said delivery of said deed.

Defendants admit that the consideration mentioned in said deed to them is twelve hundred and thirty-six and $\frac{60}{100}$ dollars, but they deny that that sum is or was the true consideration for said deed and conveyance, and allege that the consideration of the same was

the payment of the aggregate of the indebtedness of said Isaac Augustus Crawford to said H. G. Doon, stated in said mortgages to him, the satisfaction and cancellation of the indebtedness and mortgages aforesaid to the defendants, a store account of plaintiff to defendants of $10.87, and the agreement of defendants to move plaintiff's buildings as aforesaid, and costs and attorney's fees incurred by said H. G. Doon by reason of an action brought by him in the first judicial district court of this Territory to recover his said indebtedness and to foreclose said mortgages, and that they, upon the execution and delivery of said deed by plaintiff to them, fully paid said H. G. Doon said indebtedness and expenses aforesaid, amounting to $863.90, who thereupon satisfied and canceled said indebtedness and mortgages on the records of said Weber county, and that they at the same time cancelled and fully satisfied said indebtedness and mortgages to them, and gave said plaintiff their agreement or bond to remove said buildings; and defendants deny that plaintiff did not receive any part or portion of said consideration, or that she did not know how said amount was arrived at or upon what it was based; on the contrary, they allege that she knew all
20 about it; and defendants deny that the consideration mentioned in said deed or the consideration aforesaid was ever or is a grossly inadequate price for said real estate, or that the same was, at the time of making, execution, or delivery of said deed to them, or at any other time, of the reasonable value of twenty-five hundred dollars, or worth said sum or any sum greater than that named in said deed and paid by the defendants.

2nd. The defendants, further answering the complaint on file in in the above-entitled action against them, and for a defense thereto, and by way of cross-complaint against said plaintiff, allege that on the 10th day of August, A. D. 1885, H. G. Doon commenced an action in the first judicial district court of the Territory to foreclose the mortgages described in the complaint as executed to him by filing his complaint in the office of the clerk of said court and having a summons issued thereon; that said plaintiff, Isaac Augustus Crawford, and these defendants were made parties defendant to said action; that shortly thereafter the plaintiff learned that said action had been commenced, and came to these defendants and said that if she had a little time she thought she could procure the money to pay the said Doon and release said mortgages, and requested these defendants to get her some time; that in pursuance of her said request these defendants went to the attorney of said Doon and requested him to not push said suit, which he agreed he would not do, and thereupon the defendants notified the plaintiff that she could have time; that thereupon, as they are informed and believe and so state the fact to be, plaintiff applied to several persons to lend her money on the real estate hereinbefore described to pay
21 said indebtedness, but that she was unsuccessful in her efforts and applications; that on or about the 8th day of January, A. D. 1886, the attorney of said Doon notified plaintiff and these defendants that he could not wait longer, but would have to proceed with said action to foreclose; that thereupon the plaintiff pro-

posed to these defendants that if they would pay the said Doon the amount of the indebtedness then due and owing him on said mortgages, together with his attorney's fees and the expenses incurred in said action, cancel the indebtedness due and owing them by the said Isaac Augustus Crawford and the mortgages described in the complaint as given to them to secure the same, cancel and forgive an indebtedness due and owing them by the said plaintiff for goods theretofore delivered to her by them at her request, and remove her buildings from said real estate to that portion of the real estate apportioned to Frank Crawford, that she would convey to them by a good and sufficient deed of conveyance the real estate described in said mortgages; these defendants accepted said proposition and had prepared a proper deed of conveyance for her to execute, and made and executed a bond to her binding themselves to remove the said buildings as aforesaid; that after said papers were prepared plaintiff said that she would like a little more time to see what she could do before signing them and did not execute said deed at said time.

That thereafter, on the 23rd day of January, A. D. 1886, plaintiff notified these defendants that she was ready to execute said deed and to carry out the proposition aforesaid; that thereupon, at the request of Josiah M. Ferrin, who was the agent of and acting for the plaintiff, Amos B. Corey, one of these defendants, accompanied by said Ferrin and a notary public and other persons,
22 went to the residence of the plaintiff; that she then and there executed, acknowledged, and delivered to these defendants the deed in the said complaint mentioned as made to them, and thereupon they delivered to the plaintiff their bond, duly and properly executed, binding themselves and agreeing to remove her said buildings as aforesaid, and paid to said H. G. Doon the indebtedness due and owing him as aforesaid, with the cost and expenses incurred by him in said action to foreclose his mortgages, amounting to the sum of $863.90; cancelled and satisfied the indebtedness and mortgages of said Isaac Augustus Crawford to them, amounting to the sum of $388.83, and cancelled and forgave the indebtedness of said plaintiff to them of $10.87, and that the said Doon thereafter and on the 25th day of January, A. D. 1886, cancelled and satisfied on the records of said Weber county his said indebtedness and mortgages, and on the 26th day of said January dismissed his said action to foreclose said mortgage; that the foregoing and none other are all the facts and circumstances attending the conveyance of said real estate to the defendants by the plaintiff, and they were all fully known to the plaintiff at the time she executed, acknowledged, and delivered the said deed to defendants; that the plaintiff never until the commencement of the action made any complaint to the defendants about said transaction, and has never sought to rescind said contract or to cancel said deed except by this suit; that these defendants have time and again offered to remove said buildings of plaintiff, in compliance with their said bond and agreement, and have been to her residence time and again with workmen and the proper appliances to make said removal, but have been prevented

from so doing by the plaintiff; that the plaintiff has ever
23 since said time of said conveyance to them been and is now in the possession of said real estate and premises and refuses to surrender the same to the defendants, although often requested so to do.

Wherefore the defendants demand judgment:

1st. That plaintiff take nothing by her complaint.

2nd. That they have and recover of the plaintiff their costs.

3rd. That the deed from plaintiff to them be adjudged to be a good and valid conveyance, and that their title be quieted as against the plaintiff, and that she be forever enjoined and debarred from asserting any claim or title to the said real estate.

4th. For all other proper relief.

KIMBALL & WHITE,
Att'ys for Def'ts.

TERRITORY OF UTAH, }
County of Weber, } *ss:*

Amos B. Corey, being duly sworn, deposes and says that he is one of the defendants in the above-entitled action; that he has heard read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge except as to the matters stated therein on information and belief, and that as to those matters he believes it to be true.

AMOS B. COREY.

Subscribed and sworn to Feb'y 16th, 1888, before me—
LINDSAY R. ROGERS,
[SEAL.] *Notary Public.*

(Endorsed: No. 1311. Title of court and cause. Acknowledgment of service. Filed Feb'y 16th, 1888. H. H. Henderson, clerk, by A. H. Drake, deputy clerk. Kimball & White, att'ys for def'ts.)

24 *Demurrer.*

(Title of Court and Cause.)

Now comes the plaintiff above named and demurs to the cross-complaint filed herein, and for cause of demurrer alleges:

That said cross-complaint does not state facts sufficient to constitute a cross-cause of action.

Dated Feb. 22d, 1888.

P. H. EMERSON AND
A. R. HEYWOOD,
Attorneys for Plaintiff.

(Endorsed: No. 1311. Title of court and cause. Demurrer to cross-complaint. Filed February 21st, 1888. H. H. Henderson, clerk, by A. H. Drake. Service of copy admitted Feb. 21st, 1888. Kimball & White, attorneys for defendants.)

Order Sustaining Demurrer to Cross-complaint.

(Title of Court and Cause.)

The demurrer to the cross-complaint in this cause having been heretofore argued and taken under advisement, now comes the court and, being fully advised in the premises, orders that said demurrer be, and the same is hereby, sustained.

Done in open court Jan. 14, 1889.

H. P. HENDERSON, *Judge.*

25 *Findings of Fact and Conclusions of Law.*

(Title of Court and Cause.)

This cause having been called regularly for trial before the court (a jury trial having been expressly waived by the attorneys for the respective parties in open court), Messrs. Thomas Maloney, George J. Marsh, and E. M. Allison, Jr., appeared as attorneys for the plaintiff, and James N. Kimball and Wallace R. White appeared as attorneys for the defendants.

And the court having heard the proofs of the respective parties and considered the same, and the records and papers in the cause and the arguments of the respective attorneys thereon, and the cause having been submitted to the court for its decision, the court now finds the following facts:

First. That plaintiff, Catharine R. Toland, is the widow of William Toland, deceased; that said William Toland died at Ogden city, Utah, on the 28th day of January, A. D. 1881; that plaintiff, previous to and at the time of her marriage to said William Toland, was the widow of Patriot L. Crawford, deceased; that said Patriot L. Crawford died on or about the year 1868; that he left issue of his marriage with plaintiff three children, viz., Isaac Augustus Crawford, Minnie Crawford, and Frank Crawford.

Second. That plaintiff, Catharine R. Toland, is the daughter of Mary Clark, deceased; that said Mary Clark died in Ogden city, Weber county, Utah, on or about the 12th day of December, A. D. 1878, testate, leaving both real estate and personal property in Ogden city, Utah.

Third. That the will of the said Mary Clark was duly admitted to probate by the probate court of said Weber county on or about the 24th day of January, A. D. 1879; that by the terms of
26 said will the following-described real estate—a part of lot three (3), in block thirty-one (31), in plat "A," Ogden City survey, viz: Beginning at the southwest corner of said lot three (3), thence north 63 feet, thence east 50 feet, thence north twenty (20) feet, thence east to the east line of said lot, thence south 83 feet (eighty-three), thence west to the place of beginning—was devised as follows: An undivided one-third thereof to Isaac L. Clark and one undivided two-thirds thereof to Isaac Augustus Crawford and Frank

Crawford, the said children of plaintiff, with the use of said undivided two-thirds to plaintiff for and during her natural life.

Fourth. That on the 16th day of March, A. D. 1880, said William Toland, then the husband of plaintiff, purchased of said Isaac Augustus Crawford for the sum of one thousand dollars, which he then paid, the interest of said Crawford in said real estate devised to him by said will of Mary Clark, and on said day the said Crawford, by a good and sufficient warranty deed, made, executed, acknowledged, and delivered by him to said William Toland, conveyed his said interest in said real estate to said William Toland.

Fifth. That on the 26th day of November, A. D. 1880, the said William Toland, then the husband of the plaintiff, Catharine R. Toland, for a good and valuable consideration to him, the said William Toland, moving from said plaintiff, made, executed, acknowledged, and delivered to plaintiff, Catharine R. Toland, a good and sufficient deed, and thereby conveyed to her the said property conveyed to him by said Isaac A. Crawford, as set forth in finding four.

Sixth. That said deed of Isaac Augustus Crawford to said
27 William Toland was not recorded in the office of the county recorder of said Weber county, Utah, until August 6th, 1885, and said deed of William Toland to the plaintiff, Catharine R. Toland, was not recorded in said office until January 25th, 1886.

Seventh. That on the 3rd day of March, A. D. 1881, the probate court in and for the said county of Weber and Territory of Utah, in the matter of the estate of said Mary Clark, deceased, duly made, entered, and gave a decree distributing the real estate described in finding No. 3, whereby it duly distributed an undivided two-thirds thereof to said Isaac Augustus Crawford and Frank Crawford and a life estate therein to the plaintiff, Catharine R. Toland, and said court on said day duly appointed commissioners to partition said estate; that said commissioners on said day duly made a partition of said real estate and set apart to said Isaac Augustus Crawford that part of said real estate described as follows, to wit, a part of lot (3), in block thirty-one (31), in plat "A," Ogden City survey: Beginning at the southwest corner of said lot three (3), and running thence north twenty-one (21) feet, thence east two hundred and twenty-five (225) feet, thence north sixty-two (62) feet, thence east one hundred and five (105) feet, thence south eighty-three (83) feet, thence west three hundred and thirty (330) feet to the place of beginning, with the buildings and improvements thereon set apart, and to the plaintiff a life estate therein, and that said commissioners duly reported said partition to said probate court, and said court, on the 4th day of March, A. D. 1881, duly made, gave, and entered an order confirming said report.

Eighth. That plaintiff, Catharine R. Toland, and her husband were residing on said premises at the time of the death of her said husband, William Toland, and plaintiff has continued to reside thereon ever since.

28 Ninth. That at the dates alleged in the complaint the said Isaac Augustus Crawford made, executed, and delivered to H. G. Doon and the defendants the respective mortgages described

in the complaint on the property described in finding seven; that said mortgages were, except the first thereof, so made, executed, and acknowledged without the knowledge, consent, or assent of the plaintiff.

Tenth. That each of said mortgages was made, executed, and delivered to the respective parties, to wit, H. G. Doon and the defendants, for a good and valuable consideration, to wit, to secure the payment of debts owing by said Crawford to the said parties respectively at the time of their execution.

Eleventh. That at the time of the execution and delivery of said mortgages respectively, and at the time said Crawford incurred the indebtedness secured thereby, neither said Doon nor said defendants knew or had notice or information that either said deed to said William Toland or said deed from said William Toland to plaintiff had been executed or delivered, or that said plaintiff had any right, title, or interest in said last-described real estate except a life interest therein, and that each of said mortgages were recorded at the office of the recorder of said Weber county prior to August 6th, 1885, and before either said Doon or said defendants had knowledge, notice, or information that said Crawford had executed said deed to said William Toland or the said William Toland had executed said deed to plaintiff.

Twelfth. That on August 4th, 1885, the defendants cancelled and satisfied of record their mortgages so executed and delivered to them; that the indebtedness of said Crawford to them had not at that time or ever been paid; that said mortgages were so cancelled and satisfied by defendants at the request of plaintiff, upon
29 her representation that if they would so do she would pay them the amount of the indebtedness mentioned in said mortgages; that this was the only reason and consideration for said cancellation and satisfaction, and the plaintiff never paid said indebtedness until the execution of the deed by her to plaintiff in these findings hereinafter mentioned.

Thirteenth. That defendants never at any time procured from said H. G. Doon or any other person an assignment to them or to any person of his said mortgages, either with or without notice that said Isaac A. Crawford had no title to said real estate, or with or without knowledge, notice, or information that said Crawford had conveyed said real estate to said William Toland, or he to the plaintiff.

Fourteenth. That on the 23rd day of January, A. D. 1886, the plaintiff, Catherine R. Toland, made, executed, acknowledged, and delivered to the defendants a warranty deed, whereby she conveyed and warranted to the defendants the real estate described in finding seven, in consideration of the agreement of said defendants to pay the indebtedness owing by said Isaac Augustus Crawford to said H. G. Doon, and procured the cancellation of said mortgages to said Doon, and to forgive and cancel the indebtedness of said Crawford to them, and cancel an indebtedness of plaintiff to them of ten dollars and $\frac{87}{100}$, and of the agreement of defendants to remove her

buildings from their premises to an adjoining lot and fit them up for her.

Fifteenth. That said deed bore date January 8th, 1886, and was executed, acknowledged, and delivered by the plaintiff freely and voluntarily to the defendants on January 23rd, 1886; that defendants thereupon on said day paid the said H. G. Doon the indebtedness owing him by said Isaac Augustus Crawford, and thereafter
30 procured the cancellation and satisfaction of said mortgages on the records of said Weber county, and at the same time cancelled and forgave the indebtedness of said Crawford and of said plaintiff to them; that the aggregate of the indebtedness so paid and cancelled by defendants was the sum of twelve hundred and thirty-six dollars and sixty-six cents; that the same was the fair and adequate value of said land at said time.

Sixteenth. That said deed to defendants was made by said plaintiff with full knowledge of all the facts and circumstances of the execution of said mortgages by said Isaac A. Crawford, and that he had no title to said real estate at the time of their execution and delivery, and after she had advised and consulted with her friends and counsel in relation thereto, and with the advice of her friends, and especially one Josiah M. Ferrin, and was not made by her upon the importunities or by reason of any threats of defendants or of their agents or attorneys.

Eighteenth. That on January 23rd, 1886, upon the execution and delivery to them by said plaintiff of said deed, the defendants made and delivered to plaintiff a bond agreeing to remove said buildings from said premises on to said adjoining lot for plaintiff, and have since the delivery of said deed gone to said premises on several occasions to remove said buildings as aforesaid, but were prevented from so doing by plaintiff; that the defendants have — at all times and now are ready and willing to remove the same.

Nineteenth. That all the allegations of the complaint inconsistent with those findings are untrue.

Twentieth. That all the allegations of the second defense
31 of defendants set forth in the answer herein are true.

As conclusions of law from the foregoing facts the court finds as follows:

1st. That the deed of plaintiff, bearing date January 8th, 1886, to defendants for the following-described real estate in Weber county, Utah Territory, to wit, a part of lot three (3), in block thirty-one (31), plat "A," Ogden City survey, beginning at the southwest corner of said lot and running thence north twenty-one (21) feet, thence east two hundred and twenty-five feet (225), thence north sixty-two feet, thence east one hundred and five (105) feet, thence south eighty-three feet (83), thence west three hundred and thirty (330) feet to the place of beginning, is a good and valid deed and vested the title in the defendants.

2nd. That plaintiff has no estate, right, title, or interest in or to the said real estate, and that she should surrender the possession thereof to the defendants.

3rd. That defendants should remove the buildings on said land

onto the lot adjoining it on the north, and fit the same up for the plaintiff.

4th. That the defendants and plaintiff each pay their own costs herein.

And it is ordered that a judgment be entered herein accordingly. April 29th, 1889.

HENRY P. HENDERSON,
Judge of the 1st Judicial District Court of Utah Territory.

(Endorsed: No. 1311. Title of court and cause. Findings of fact and conclusions of law. Filed April 29th, 1889. H. H. Henderson, clerk.)

32 TERRITORY OF UTAH, } ss:
County of Weber, }

Judgment and Decree.

(Title of Court and Cause.)

This cause having been regularly called and tried by the court, and the findings of fact and conclusions of law and the decision thereon in writing having been duly made by the court, which are now on file in this court, whereon judgment was demanded in favor of the defendants, Geo. L., Amos B., Warren W., and Charles J. Corey and Ira E. Spaulding, against the plaintiff, Catharine R. Toland, and wherein it was by the court ordered that judgment herein be entered in accordance with said findings of fact and conclusions of law, on motion of Messrs. Kimball & White, attorneys for defendants:

It is now, in consideration of the premises and said findings and conclusions, and by reason of the law, hereby ordered, adjudged, and decreed that the deed made, executed, and delivered by the plaintiff, Catharine R. Toland, to the defendants on the 23rd day of January, A. D. 1886, which deed bears the date of January 8th, 1886, whereby she conveyed and warranted to said defendants the following-described real estate, situate, lying, and being in Ogden city, in the county of Weber and Territory of Utah, to wit, a part of lot three (3), in block thirty-one (31), plat "A," Ogden City survey, beginning at the southwest corner of said lot and running thence north twenty-one (21) feet, thence east two hundred and twenty-five (225) feet, thence north sixty-two (62) feet, thence east one hundred and five (105) feet, thence south eighty-three (83) feet, thence
32*a* west three hundred and thirty (330) feet to the place of beginning, is a good and valid deed and vests the title to the said real estate in the said defendants, and that the said plaintiff has no right, title, or interest of, in, or to the said real estate or any part thereof, and all adverse claims of said plaintiff to said premises or any part thereof are hereby adjudged and decreed to be invalid and groundless, and that the defendants' title thereto is hereby declared and adjudged to be and is quieted against all claims and

demands of the plaintiff, Catharine R. Toland, and any person or persons claiming under her, and she is hereby perpetually estopped from setting up any claims thereto or to any part thereof.

And it is hereby further ordered, adjudged, and decreed that the plaintiff, Catharine R. Toland, do vacate said premises and surrender the possession thereof and of every part thereof to the defendants.

And it is further ordered, adjudged, and decreed that the defendants do at once, on the surrender of the possession of said premises to them, remove the dwelling-house and other buildings on said premises to the premises immediately adjoining said premises on the north, and fit the same up for plaintiff in as good condition as they are now in; and it is further ordered and adjudged that defendants pay the costs herein, except the costs of plaintiff's witnesses.

Ogden, Utah, April 29th, 1889.

HENRY P. HENDERSON,
Judge 1st Judicial District Court of Utah Territory.

(Endorsed: No. 1311. Title of court and cause. Judgment and decree. Made, entered, and filed April 29th, 1889. H. H. Henderson, clerk.)

32*b* *Statement on Motion for New Trial and Appeal.*

Title of Court and Cause.

Notice of Intention to Move for New Trial.

Messrs. Kimball and White, attorneys for defendants, and H. H. Henderson, clerk:

Take notice that the plaintiff intends to move the court to vacate and set aside the findings, decision, and decree of the court in the above-entitled action, and to grant her a new trial of the said cause on the following grounds, to wit:

I. Insufficiency of the evidence to justify the findings and decision and decree of the court, and that the said decision is against law.

II. Errors in law occurring at the trial and excepted to by the plaintiff.

Said motion will be made on a statement to be hereafter prepared.

GEORGE J. MARSH AND THO. MALONEY,
Attorneys for Plaintiff.

Ogden city, Utah, May 14, 1889.

33 (Title of Court and Cause.)

This is an action brought by the plaintiff against the defendants to have a decree of the court compelling them to reconvey to her by good and sufficient deed or deeds a certain lot or parcel of land mentioned and described in the complaint, and to remove the cloud from her title to the said land, and for general relief.

The cause, being regularly called for trial, was tried by the court without a jury on the 9th day of April, 1889.

CATHARINE R. TOLAND, called for the plaintiff, being first duly sworn, testified as follows:

Examined by Mr. ALLISON:

Q. What is your name?
A. Catharine R. Toland.
Q. Where do you reside?
A. Main street; the first door south of Clark & Shaw's.
Q. In this city?
A. In this city.
Q. How long have you lived there?
A. 14 years.
Q. Contin-ously?
A. Yes, sir.
Q. Mrs. Toland, were you ever acquainted with Isaac Augustus Crawford?
A. Yes, sir.
Q. Is he living or dead?
A. He is dead.
Q. Do you know when he died?
A. In 1887.
Q. What, if any, relationship did he bear to you?
A. He was my son.
Q. Do you know Frank Crawford?
A. Yes, sir.
Q. What relationship, if any, does he bear to you?
A. He is my son.
Q. Is he living?
A. Yes, sir.
34 Q. Do you know Minnie Crawford?
A. Yes, sir.
Q. What relationship, if any, does she bear to you?
A. My daughter.
Q. Is she living?
A. Yes, sir.
Q. Mrs. Toland, I ask you if you know of the fact of a mortgage being given by yourself and Isaac Augustus Crawford in favor of Mr. Doon, of Terrace, upon a certain piece of real property here in Ogden.
A. Yes; I signed the mortgage.
Q. Do you know about what time you signed it?
A. I don't remember the date.
Q. I'll refresh your recollection, and ask you if it wasn't about the 25th of January, 1884.
A. It would be about that date; that's correct, as near as I can remember.
Q. Upon what property was that mortgage given?
A. Upon a piece of land that I'm living on. My house stands on it at present.
Q. Which side of Main St. is that on?
A. On the east side.

Q. Do you now know of any other mortgages having been given by any other person upon that property?

A. I don't know of any, but I've heard there have been mortgages given since; but I never saw any others, nor I never signed any other.

Q. Do you know of any other mortgages?

A. I have heard there have been others given, but I never saw any.

Q. You understand there have been others given?

A. I understand there has been others given.

Q. How many, if you know?

A. I think four. I've heard there were.

Q. I'll ask you if you know how many mortgages——

35 A. Four, I've heard.

Q. Do you know of any other mortgages having been given except this one you signed, by anybody, in favor of Mr. Doon, of Terrace?

A. I don't know of any.

Q. You have heard of them?

A. I have heard there were such.

Q. Do you know anything about the time they were given?

A. No; I do not.

Q. Do you know upon what property those mortgages were given?

A. I don't know anything about those mortgages. I have heard it was on the same property I signed—my property there.

Q. And by whom?

A. Crawford—Isaac Augustus Crawford.

Q. Assuming these mortgages were given by Isaac Augustus Crawford, what, if anything, do you know of their being signed and executed by him, if they were signed and executed?

Mr. KIMBALL: I object; immaterial and incompetent here.

The COURT: Why is that material? She wouldn't be liable for his mortgages simply because she knew about them. The presumption is that she knew nothing about them until she is shown to have had something to do with them. If mortgages are given without her knowledge, she isn't a party until she is brought into them in some way. I think at the present time it isn't material. At some future time it may be.

Mr. ALLISON: We except.

Mr. ALLISON to the witness:

Q. Are you acquainted with George L. Corey?

A. No, sir; I do not know which is George L. Corey.

Q. You don't know him by sight?

A. No; I presume that is George L. Corey, but I couldn't swear to it.

Q. Are you acquainted with Amos B. Corey?

A. Yes, sir.

36 Q. Are you acquainted with Warren W. Corey?
A. No, sir.
Q. Charles J. Corey?
A. I have understood that is him sitting there.
Q. Ira E. Spaulding?
A. No, sir; I do not.
Q. Do you know of the firm of Corey Brothers?
A. I know there is such a firm.
Q. Do you know where they are doing business?
A. Yes, sir.
Q. Where?
A. On Fourth street—south side of Fourth street, in this city.
Q. Do you know whether Mr. Isaac Augustus Crawford ever had any business transactions with the firm of Corey Brothers, these defendants?
A. I don't know that he did.
Q. I'll ask you to state if you know of any mortgage having been given upon any real estate in this city by Isaac Augustus Crawford.

Mr. KIMBALL: I object; she sets up the mortgages were given.
Mr. ALLISON: It is material to call her attention to the subject.
The COURT: Go on.

A. I do not know that they were ever given. I've heard it, that's all.
Q. You never saw them?
A. I never saw them.

Mr. KIMBALL: I move to strike that out as immaterial and irrelevant.
The COURT: Mr. Allison says that it is preliminary.

Mr. ALLISON to the witness:

Q. What, if any, negotiations ever took place between yourself and the defendants in this action with reference to the conveying by you of this land you speak of by you to them, with reference to their purchase of the land in which you are in possession of.

37 A. Well, they came to me and told me they held these mortgages, and the only show that I had—that my deeds were not worth the paper they written on. Lawyer Nelson told me—

Mr. KIMBALL: I submit Lawyer Nelson wasn't a defendant.
Mr. ALLISON: I expect to show Mr. Nelson was acting for them.
Mr. KIMBALL: I'm objecting to the order of proof.
The COURT: Let her state who it was made this statement.

Mr. ALLISON to the witness:

Q. Where did the negotiation, talk, or conversation first take place between you and these defendants or any of them with reference to their buying the property?
A. Always at my house.

Q. When did the first conversation take place between you and these defendants or any of them?

A. I couldn't give you the date, but they came to me time and again.

Q. The deed is admitted by the answer to have been signed January 23rd, 1886. I'll ask you if that was about the time.

A. Before that—for months before—I don't just know how long—they had been there time and again.

Q. Do you remember the first time these defendants or any of them were there?

A. No; I couldn't tell the date.

Q. About how long before you signed this deed to them?

A. I can't tell you the date. It seems to me it was two or three months before. I know they were there a great many times.

Q. The deed was signed on the 23rd day of January, 1886. How many times had they come there to see you about that before you signed it?

A. I don't know; they came eight or ten times before; they came a great many times.

38 Q. Do you remember who came on those visits?

A. There's three of the Corey brothers been there—Mr. Amos Corey, Mr. Charles Corey, and the other brother was there with them once or twice and perhaps more, but that I know of.

Q. Anybody else with them?

A. And Lawyer Nelson came with them. Lawyer Nelson was there a few times.

The COURT to the witness:

Q. With them?

A. With them always, I think.

Mr. ALLISON to the witness:

Q. Prior to the time the deed was signed?

A. Yes.

Q. State whether or not Mr. Nelson was present when that deed was signed.

A. I don't remember Mr. Nelson being present at the time. I remember Mr. Corey and Mr. Komball.

Q. Now, I wish you would state what was said by these defendants or by Mr. Nelson in their presence upon these occasions.

A. They had been to see me a great many times, and I had always refused, expecting to sell my property and pay it. I never refused to pay the $350.00 I was bound for.

Q. The mortgage you signed?

A. All the mortgage I ever knew anything about.

Q. You signed the mortgage for $350.00?

A. I signed the mortgage for $350.00, and have always been willing to pay it.

Q. I want to know what they said to you.

A. They told me the deeds were not worth the paper they were written on, and Lawyer Nelson told me they would take my house

from me, and I would be turned into the street if I didn't do it. They were only doing this as a kindness to me, and if I
39 didn't sign it they would turn me out, but if I would sign it they would move my house off if I would give them four or five thousand dollars' worth of property for $350.00.

Q. You say they informed you your deeds were no good?

A. Not worth the paper they were written on.

Q. You say they told you your deeds were no good. Do you know what deeds they referred to?

A. My deeds that my husband made to me, deeding the property to me, and Isaac Augustus Crawford's deed to me—the deed which put me in possession of the property. They told me those deeds were no good, because they were not on record.

Q. Do you remember which one of the defendants or any person with them made that remark or said that?

A. Lawyer Nelson told me.

Q. The defendants were present?

A. Yes; I'm positive the defendants were always present with Lawyer Nelson. I don't remember that he made a visit alone.

Q. State whether or not if before you signed that deed the defendants exhibited a deed to you when they asked you to sign?

A. No; I never saw any deed till they brought the deed to sign. They had the deed made out and brought it to me to sign.

Q. Did you employ anybody to make out a deed?

A. No, never.

Q. State whether, at the time this deed was signed, there was any person there representing to you as an attorney.

A. No, sir; there was not.

Q. About what time of the day that the deed was signed did the defendants come to your house?

A. I don't know if it was before noon or after. I couldn't say.

40 Q. State who came then.

A. There was Amos Corey and Charles Corey, and I think there was another one—I think there were three of the Coreys there, and Josiah Ferrin, the gentleman that sits there, and Mr. Kimball was the notary or their lawyer that came.

Q. He was there in a double capacity, was he? Was Mr. Nelson there?

A. I don't remember that Mr. Nelson was there that day. I don't remember. I was in so much trouble and worry over it, but I remember about their being there.

Q. What, if anything, was said by these defendants or by Mr. Kimball in their presence about the errand they had come there on?

A. They said they had brought a deed for me to sign. I couldn't do anything else than sign it.

Q. What, if anything, did they say about foreclosing the mortgage if you didn't sign it? Do you remember anything being said upon that subject?

A. No; I don't remember anything about it.

Q. What, if anything, did they say about taking the land from you?

A. They said they would take the land and they were doing me a kindness—my deed was no good, and they'd take the land to pay the $350.00.

Q. What, if anything, did they say about turning you into the street, or any of them?

A. The words was used by Lawyer Nelson, I owed it to their kindness they didn't turn me into the street. That wasn't on this day, but, of course, that was what they held out to me all the time. That was the talk all the time.

Q. What, if anything, did you say to them on that occasion about their granting you time that you might get legal advice?

Mr. KIMBALL: What occasion?

Mr. ALLISON: The day the deed was signed.

41 A. I had asked them a day or two before to give me time until Monday to try and make some arrangements, and word came back they said they didn't know what they would do with me now.

Q. At the time of the signing of this deed and immediately before, what was the condition of your health?

A. My health was very poor.

Q. What is your occupation?

A. Dressmaking.

Q. How long have you been engaged in that occupation?

A. About 14 years.

Q. In what respect was your health poor—how were you affected?

A. I was worked down. My nerves was shattered and my health was poor. I was troubled with dyspepsia, and had been for a year; not able to attend to business, really.

Q. On the day they came there for the purpose of getting that deed signed, did you sign it?

A. Yes.

Q. Who, if anybody, took your acknowledgment?

A. Lawyer Kimball.

Q. Do you remember the questions he asked you?

A. Yes; he asked me if I signed it willingly—with my free will.

Q. What was your reply?

A. I said, "No, sir;" I signed it simply because I had to.

Q. Was there anything else asked between yourself and Mr. Kimball?

A. Not a word. He didn't make any reply.

Q. Corey brothers were still present?

A. Yes; the Corey brothers were present.

Q. How long did they remain there after you signed it?

A. Well, they didn't remain but a few minutes. They got all they come for, and so they went.

Q. Did you ever have that deed in your possession?

A. No.

Q. Did you ever handle it?

A. No.

42 Q. State whether or not you raised it from the table at all.

A. I don't know that I had the deed in my hand. I had to touch it when I signed it, and I guess that's all the touch I gave to the deed.

Q. Did you have the deed in your hand at all after you signed it?

A. I never touched the deed.

Q. State whether you handed it or delivered the deed to these defendants.

A. I did not.

Q. After you signed that deed, who took the deed from the table?

A. I don't know.

Q. Did you say you never handed or delivered the deed to anybody?

A. I did not.

Q. You didn't deliver it to any of the defendants?

A. I didn't deliver it to anybody.

Q. To deliver to the defendants?

A. No; I did not.

Q. Mr. Kimball wasn't there at your request?

A. He wasn't there at my request, no. There was none of them there at my request.

Q. What, if any, agreement was made between you and the defendants or any of them about the price of the property you were to receive for signing the deed?

A. I wasn't to receive anything except to have my house moved. They offered to move my house.

Q. Where to?

A. Anywhere on my lot there.

Q. Have you any other property there except this particular property?

A. It's a place I have a little claim onto next to me.

Q. You say there was no price talked of or agreed upon between you and them for this property. Do you know what consideration was stated in the deed?

A. No; there was no consideration stated in the deed that I know of, unless they was taking it for the mortgage.

Q. Did any of them read the deed to you there?

A. Yes.

42½ Q. You don't remember what the consideration was?

A. No; I don't remember any consideration at all.

Q. Did you have any means of knowing, at the time you signed that deed, what the value of the property was described in the deed?

A. Yes; I knew something of it.

Q. About what did you consider it worth?

A. $175.00 a foot.

The COURT to the witness:

Q. What year was that?

A. 1886. It's 20 rods deep.

Q. How much front?
A. 21 feet front.
Q. How did you base your estimate as to value?
A. Buyers came to me.
Q. Came to you to buy that property?
A. Yes.
Q. What offers had you been made for it?
A. Well, I had been offered $125.00, and Mr. Chamberlain would give me $150.00. He was there to buy of me. The gentlemen is in the court-room.
Q. Was that before you signed the deed that you received these offers?
A. Yes.
Q. What did you mean, Mrs. Toland, by saying, in reply to Mr. Kimbal's question, that you didn't sign that deed voluntarily, but you were forced to?
A. Because they told me there was no other way to do. They'd turn me out in the street; take my house away from me; leave me without a shelter.
Q. Did you believe then they would do it?
A. They said so, and they acted so. They didn't give me any peace or rest about it.
Q. I ask you, Mrs. Toland, if you honestly believed they would carry out what they threatened?
A. Yes; I believed they would.
Q. When you received those offers, Mrs. Toland, before you signed that deed, why didn't you sell it?
A. Because they was holding these mortgages—those fraud-
43 ulent mortgages. I could do nothing—nothing.
Q. It was because of those mortgages you didn't sell it?
A. Yes.
Q. What, if any, means did you have at that time to liquidate those mortgages—discharge them?
A. I didn't have any means; only the place—the land.
Q. Had you made any effort to discharge this first mortgage?
A. Yes; but they held those others which I didn't have any account of.
Q. What person or persons did you ever endeavor to borrow money of to discharge that first mortgage?
A. Mr. Josiah Ferrin and Mr. Clark.
Q. What was their reply when you asked them for the loan?
A. Well, Mr. Ferrin said he would see—he would come down and see—and he wouldn't assume it on account of these other mortgages that were on it.

Cross-examination.

Examined by Mr. KIMBALL:

Q. Bishop Josiah Perrin had been talking to Corey Brothers about this property for a week or two before you signed this deed, hadn't he?

A. I don't know that it was that length of time. He went to see them as a friend of mine.

Q. You sent up the valley and got Bishop Ferrin to come down here and do this talking for you and go and see them?

A. No, sir; I did not. Bishop Ferrin came down to see about loaning me that money.

Q. Well, then, you got him to go and see Corey Brothers?

A. After I could do nothing I got him to go and see if they wouldn't give me time.

Q. He and Corey Brothers went over there the day you signed the deed together, didn't they?

A. Yes.

44 Q. He had been there all day, hadn't he, at your house?

A. No.

Q. How long had he been there that day?

A. I don't know how long.

Q. His wife was there at the time, wasn't she?

A. Not that I remember of. I don't remember Mrs. Ferrin was there at that time.

Q. Don't you know she was there at the time you signed this deed?

A. No, sir.

Q. Well, Mr. Ferrin was there?

A. Mr. Ferrin was there.

Q. He came with Corey Brothers, Mr. Nelson, and myself?

A. Mr. Ferrin was there.

Q. Well, he came there with us at the time we went there, didn't he—at that time with Corey Brothers?

A. He may have come in a few minutes before or a few minutes after. I wouldn't swear he came there with Corey Brothers.

Q. At any rate, he had been to see Corey Brothers during the day at your request?

A. I don't know that he had. He may have.

Q. He told you what Corey Brothers' proposition was before the deed was signed over there, didn't he?

Mr. ALLISON: We object to what this witness was told by Mr. Ferrin.

A. All I know is, they came onto me with the deeds to sign.

Q. Did you not in the morning say you would not accept any such proposition or do anything of the kind?

A. I don't remember Mr. Ferrin saying anything to me in the morning.

Q. Didn't you send word by him to Corey Brothers in the morning of the same day you signed this deed that you wouldn't accept the proposition?

A. I don't remember seeing Mr. Ferrin before he came.

Q. You don't remember that he and his wife had been at your house all of that day?

A. No, I do not.

45 Q. Don't you know—didn't you know at the time, and wasn't the proposition of Corey Brothers to pay off the Doon mortgages and cancel their own in consideration of your signing the deed for that property?

A. I understand they had bought the Doon mortgages——

Q. I ask you if the proposition wasn't so, and didn't Mr. Ferrin tell you so, that they would pay off the Doon mortgages and cancel their own in consideration that you made them a deed for that property, and they would move your building over onto Frank's lot?

Mr. ALLISON: We object, because the answer admits the two mortgages held by Corey Brothers were discharged long before that.

The COURT: That's a different thing.

Mr. KIMBALL to the witness:

Q. Wasn't that the proposition made to you?

A. Yes.

Q. Have you writings to that effect—didn't they go about moving your buildings?

A. Yes; they left a writing for me to sign, but I didn't sign it.

Q. Where is that writing?

A. I don't know whether I have it yet or not.

Mr. KIMBALL: Mr. Allison, will you produce that writing? It's in Emerson's office.

Mr. ALLISON: I have never seen it.

Mr. KIMBALL to the witness:

Q. How many times did you talk to Corey Brothers about this matter before?

A. I couldn't say how many times Corey Brothers came there to see me.

Q. Hadn't this matter been pending for a long time before that?

A. It had been pending some time. They had been trying to get me to sign this for two or three months.

Q. Did they ask you to sign anything?

A. They wanted me to sign the deed over to them.

46 Q. Let me call your attention. A complaint was filed in this court against you to foreclose the Doon mortgages, wasn't there, by Mr. Nelson in favor of Doon?

A. No, sir; I never knew there was a complaint filed to foreclose the Doon mortgage.

Q. Didn't Mr. Nelson tell you so?

A. No, sir; I don't remember.

Q. You have got an exceedingly poor memory.

A. Perhaps it's as good as yours.

Q. You knew as early as August, before you made this deed, that there was negotiations pending—you had been trying to borrow money to pay the Doon mortgages?

A. Not to pay the Doon mortgages; one mortgage is all.

Q. That's one of the Doon mortgages.

A. A Doon mortgage; not mortgages.

Q. You couldn't raise the money?

A. No; I couldn't raise that on account of those other mortgages.

Q. And when you found you couldn't raise the money you made this proposition——

A. I never made a proposition.

Q. You made a proposition to Corey Brothers, as guardian of Frank, that if you could get the probate judge to make a transfer of your lot for Frank's lot you would pay off these debts?

A. Yes.

Q. You went up to the probate court, didn't you?

A. I did.

Q. Judge Williams was your attorney—filed your petition?

A. That was done.

Q. It was stated to the probate court that the object was to pay off this mortgage, or have Corey Brothers do it, so you could transfer the property?

A. It was done to keep me from being turned out—to save my house.

Q. The probate court refused to make that transfer?

A. Yes.

47 Q. Refused to transfer Frank's lot for yours?

A. Yes.

Q. And then the proposition was made that if you would convey this property of yours to Corey Brothers they would pay the Doon mortgages and cancel their own, and move your house onto Frank's lot and fit it up for you. Wasn't that the proposition?

A. Yes.

Q. And you refused the proposition, didn't you?

A. Yes; till the last.

Q. And afterward you saw Josiah Ferrin?

A. Certainly.

Q. And tried to get the money?

A. Yes.

Q. When he came down here he went to see Corey Brothers again for you?

A. He went to see about the business.

Q. Didn't he go back to you and say that Corey Brothers refused to have anything to do with it?

Mr. ALLISON: We object to that.

The COURT: It would be proper if they connect him with it.

A. He was not.

The COURT: Any knowledge that was brought home to this party would be proper. I think that's proper.

Mr. KIMBALL to the witness:

Q. Didn't they tell Mr. Ferrin and Mr. Ferrin tell you that they would have nothing more to do with it?

Mr. ALLISON: We wish an exception noted.

A. No; I don't know as they said any such thing. They were too eager to get it.

The COURT to the witness:

Q. Who?
A. Corey Brothers.

Mr. KIMBALL to the witness:

Q. Mr. Ferrin went back to them in the afternoon of that Saturday, didn't he?
A. Yes; he went down, but I didn't get Mr. Ferrin to go to them that day. I had sent down to ask them for a day or two.

48 Mr. ALLISON: We believe that our objection is well taken, and we hope that the court will permit us to ask a question or two at this time in order to show what the relationship was which actually existed between her and Josiah Ferrin.

The COURT: I don't think it depends upon that. She alleges she was compelled to do this without a chance to get advice of friends or attorneys. I think it bears upon that if she knew what the proposition was before. I think the testimony is proper.

Mr. ALLISON: Note an exception.

Mr. KIMBALL to the witness:

Q. You say you sent word over by Mr. Ferrin you wanted an hour or two?
A. No, sir; I sent a boy down, and I said Mr. Ferrin was there at the time, and he said he didn't know what they would do now, because I had made them mad by asking them to wait till Monday.
Q. Didn't he tell you they wouldn't do anything?
A. He said, "I don't know what they'll do; you have made them mad."
Q. Don't you know the way Corey Brothers come to have anything to do with it? They were trying to save Doon?
A. No.
Q. You didn't go to them to try to pay off this Doon mortgage?
A. I never did.
Q. You never heard of such a thing?
A. Never.
Q. Who first went to you about the Doon mortgages? Mr. Nelson, didn't he?
A. I never knew anything about the mortgage until Mr. Clark came to me and told me there was four or five mortgages been given on the place. I asked him who gave them, and he said Isaac Augustus Crawford, and I said, "I never heard of it," and he said they wanted to sell to him, and I said, "Don't you dare."
Q. Well, my question is, Didn't Mr. Nelson go to you first about the Doon mortgages?
A. I don't remember him ever coming to me.

49 Q. I thought he had been there about 15 or 20 time.

A. He came with Corey Brothers—except with Corey Brothers.

Q. Well now, what were you trying to do when you got Judge Williams and went up to the probate court?

A. I was trying to save my piece of land and keep my house from being moved, because they told me I could do nothing else.

Q. Did Judge Williams tell you that?

A. I didn't ask him. He was just seeing about the transfer then.

Q. Did you tell him why you wanted to make the transfer?

Mr. ALLISON: Why is this material?

Mr. KIMBALL: She says she never had an opportunity to advise with counsel or friends.

The COURT: She says she undertook in the first place to adjust the matter by making a change of property itself, so as to change the piece she's got for the other piece.

Mr. ALLISON: The counsel is trying to prove a conversation with reference to that negotiation.

The COURT: There isn't anything yet to show that isn't proper.

Mr. ALLISON: Exception.

Mr. KIMBALL to the witness:

Q. Did you tell Judge Williams why you wanted to make that transfer?

A. Judge Williams knew why I wanted to make the transfer.

Q. He knew you were going to convey Frank's deed to Corey Brothers if you got it, didn't he?

Mr. ALLISON: I submit, it's difficult for her to testify to what Judge Williams knew.

The COURT: If she knows, she can say that.

A. I don't know whether he knew it or not.

50 Q. Didn't you tell him that was what you were going to do with it?

A. I don't know if I talked with Judge Williams about that or not.

Q. Wasn't that what you was talking about in the probate court?

A. I suppose it was. That was what it was for, so he must have understood it.

Q. You was a witness there?

A. I was there to get it done, because I saw no other course.

Q. That was some two or three months before you made this deed?

A. Yes; I wouldn't make the deed until I was forced to.

Q. How were you forced to?

A. They kept after me and told me there was no alternative, and they run after me until they get me forced into it.

Q. They told you the Doon mortgages would be foreclosed and the property sold?

A. I could have raised the money on the Doon mortgages.

Q. Didn't they tell you the mortgages would be foreclosed?
A. I understood them so.
Q. You tried here to raise the money and couldn't, and so you finally made this deed?
A. Yes, and them fraudulent mortgages held me back.
Q. Corey Brothers paid the Doon mortgages?
A. I don't know whether they paid the Doon mortgages or not.
Q. Wasn't there a check delivered right in your presence to Mr. A. H. Nelson for the Doon mortgages?
A. That I couldn't say.
Q. You were there?
A. Were you there?
Q. I was.
A. You can testify if I was there or not. When I answer once, don't ask me again, please.
The COURT: You don't understand him. He asks if there was a check given in your presence?
51 A. I don't remember.
Q. He asks if it wasn't given to A. H. Nelson in payment of the Doon mortgage.
A. I don't know.

Mr. KIMBALL to the witness:

Q. Now, at the time you signed that deed where were you in the room?
A. The table sat right in the middle of the room, as nearly as possible, and Lawyer Kimball sat on this side and I stood on this side.
Q. You sat down?
A. I don't remember; I may have. You asked me if I signed it willingly. I was standing on the left of the table.
Q. I read the deed over to you, didn't I?
A. Yes.
Q. And you signed it, didn't you?
A. Yes; I signed it.
Q. And Mr. Ferrin and I witnessed your signature, didn't we?
A. I don't know who witnessed it. I know I was forced into it.
Q. I asked you if you executed that deed of your free will and accord, didn't I?
A. Yes.
Q. And you laughed and said, "Well, I don't want to do it, but I don't see how to get rid of this thing."
A. No, sir. Didn't I say, "I sign it simply because I am forced to"—didn't I say that?

The COURT: Mr. Kimball, you shouldn't dispute the witness. She's under oath. When you get on the stand you can testify.

Mr. KIMBALL to the witness:

Q. After you signed this deed you handed it to me?
A. No, sir; I did not.

Q. The deed lay on the table and I handed it to Amos Corey right in your presence?

A. I don't know about that.

Q. There was a paper there signed by the Coreys, wasn't there?

A. I don't know.

52 Q. Didn't I hand it to you after you signed that deed, and didn't I say, "Mrs. Toland, here's your contract, and, Mr. Corey, here's your deed"? You got the contract for moving the building?

A. Yes.

Q. You got that?

A. It was left laying on the table or you handed it to me, I don't know which. I was given to understand I was to sign it, but I never signed it.

JOSIAH M. FERRIN, being called for the plaintiff, being first duly sworn, testified as follows:

Examined by Mr. ALLISON:

Q. What is your name?

A. Josiah M. Ferrin.

Q. Where do you live?

A. I live up in Eden, this county.

Q. Are you acquainted with Catharine Toland, the plaintiff in this action?

A. Yes, sir.

Q. Are you acquainted with George L. Corey, Amos B. Corey, Warren W. Corey, C. J. Corey, and Ira E. Spaulding?

A. Yes, sir.

Q. How long have you known the plaintiff?

A. About thirty years.

Q. I'll ask you to state if any negotiations were ever had between you and Mrs. Toland with reference to the borrowing of money upon the property owned by her here in Ogden.

A. She came to my place in the summer or the fall of 1886 and wished to borrow $350.00 from me. I talked with her a little, and I found there was some complication with regard to the place, and I told her I would come down and see, and if it was safe I would let her have the money.

Q. Did you come down?

A. I came down in a few days, and I found that there was mortgages on the place besides the Doon mortgages, the one she wished to pay off.

53 Q. That was for how much?

A. $350.00. After I investigated the matter I talked with Mr. Nelson and Judge Williams, and I also talked with Corey Brothers, and I concluded I wouldn't lend the money on the place, because it was so mixed up I didn't want to get into trouble.

Q. She didn't say anything to you about borrowing money to pay off any other mortgage?

A. No, sir.

Q. When was it you came down and investigated that?

A. I can't tell you what month, but it was in the fall of 1886. I can't tell what time it was, but it was several months before the deed was signed.

Q. Then it must have been in the year 1885. The deed was signed in January, 1886.

A. It was in the fall of 1885—yes; that's correct.

Q. It was in the fall of 1885 these negotiations were pending?

A. That's correct. I made a mistake in that.

Q. Well, did you conclude your investigations upon that day you came down?

A. I concluded I wouldn't lend any money on the place.

Q. What, if anything, passed between you and her upon that subject subsequent to that time and before the deed was signed in favor of Corey Brothers?

A. Well, as I had to come down to see about the loaning of the money, I acted as a friend to assist her in trying to get this matter settled up between her and the parties that held these mortgages.

Q. Were you present at the time she signed the deed?

A. Yes, sir.

Q. Did she sign the deed the day it bears date of acknowledgment, on the 23rd day of January—was that when that deed was signed?

A. Yes, sir.

54 Q. Did you go there at her request?

A. Well, I think I came down about that business that day. I'm not positive; I come in town quite often. I know I called to see her. I don't remember whether she requested me to go there this time or not.

Q. You are not an attorney?

A. No, sir.

Q. You heard Mrs. Toland's evidence with reference to the messages you carried back and forth to Corey Brothers?

A. Yes, sir.

Q. When did that take place?

A. Well, at several different times.

Q. How long before the signing of the deed?

A. Two or three months before.

Q. That was the first one?

A. Yes; and at different times along up to that time.

Q. On the day this deed was signed were you there in the house at her request?

A. I don't know that I came down according to her request that day.

Q. Did you go to the house at her request?

A. No; I don't think I did. I went to the house, and while there transacted this business.

Q. State whether or not she asked you to represent her there and assist her in any way.

A. Yes; she asked me to talk to Corey Brothers in regard to this matter.

Q. On that day?

A. I think so. I'm not positive.
Q. While they were there did she ask you to?
A. No, sir.
Q. Did you understand that you were there representing her or in her interest?
A. Nothing; only as a friend.
Q. Did you see her sign the deed?
A. I did.
Q. You're one of the subscribing witnesses?
A. Yes, sir.
Q. Who was present?
55 A. Mr. Kimball, Amos Corey, I think Charles Corey, I think Mr. Nelson—I ain't positive, but I think he was there.
Q. Who took the acknowledgment, if any one?
A. Mr. Kimball.
Q. What was the language used by Mr. Kimball in taking the acknowledgment?
A. He asked her if she signed the deed with her own free will and choice.
Q. What was her reply?
A. She says, "No, sir; I don't. I do it because I'm forced to."
Q. Corey Brothers were there?
A. Yes, sir.
Q. Did Mr. Kimball make any reply?
A. I don't think he did.
Q. Did he read the deed over to her before she signed it?
A. Yes, sir.
Q. Did she have that deed in her possession after she signed it?
A. I don't remember distinctly; I should say I don't think she did.
Q. You didn't see her hand it to these defendants or to Mr. Kimball?
A. No, sir; my memory is that she went to the table, sat down and signed it, and got right up and left it lying that way.
Q. What, if any, advice did you give her about signing that deed?
A. I told her I thought it was the best she could do under the circumstances, after I had investigated the matter considerable. She couldn't sell the property for enough to cover the mortgages, and we understood from the attorneys——
Q. Which attorneys?
A. From Mr. Nelson and also from Judge Williams.

Mr. ALLISON: I don't know as that's competent evidence.

The COURT to the witness:

Q. Did you tell Mrs. Toland that you had talked with them about that?
A. Yes, sir.

The COURT: That's proper.

56 Mr. ALLISON to the witness:

Q. State what you were going to say.

A. I was going to say that after talking with the attorneys in regard to these mortgages we understood that if the place was sold under the mortgages Mr. Nelson, who held the mortgages for Doon, that the mortgages would have to be paid out of the money it sold for, and under those circumstances I thought it was best for her to sell the place to satisfy them, and have her house moved onto the other piece, so she would still have a home to live in.

Q. It was your understanding that those mortgages were valid and binding liens upon the property?

A. I did.

Q. Either at a sale — on the property at her death?

A. Yes, sir.

Q. You knew that they were given by Isaac Crawford?

A. Yes, sir.

Q. And that she hadn't signed them?

A. Yes, sir.

Q. You also knew that she had a deed for the property?

A. Yes, sir; I also knew that the deed was not recorded, or I so understood it.

Q. Do you know whether or not Corey Brothers had any knowledge of the existence of that deed?

A. They had at the time I was talking with them.

Q. When was that?

Mr. KIMBALL: I submit that's long after their mortgage.

The COURT: It don't bear upon the question how it stood at the time the mortgage was given, but it bears upon the negotiations.

Mr. ALLISON to the witness:

Q. How long did you remain there after the deed was signed?

A. Not but a little while.

Q. How long did Mr. Kimball and Corey Brothers remain there?

A. They went away immediately, before I did.

57 Cross-examination.

Examined by Mr. KIMBALL:

Q. You had been talking to Mrs. Toland from the time she first applied to you for the loan, and after you refused you had been talking to her and Corey Brothers about the settlement of this matter?

A. From time to time; yes.

Q. And going to her house and telling her what progress you were making with them?

A. Yes, sir.

Q. Do you remember being in town the 8th of January, before the signing of the deed?

A. Yes, sir; I came in that morning.

Q. Do you remember that the deed was prepared on that day?

A. Well, I didn't see the deed, but I so understood it.

Q. Mrs. Toland refused to execute a deed that day?
A. That's what I understood.
Q. She told you so?
A. Yes, sir.
Q. After that you went home, and the transaction wasn't concluded on that day?
A. Yes.
Q. You came in town and saw Corey Brothers once or twice before this deed was signed?
A. I saw them once.
Q. Before the day the deed was signed?
A. I don't know if it was before or on the same day the deed was signed.
Q. They told you after she refused to sign it that they wouldn't have anything more to do with it?
A. That's what Amos Corey told me.
Q. You then went back and prevailed upon them to do it—talked with them about it?
A. Yes; I talked with them with regard to it.
Q. And you finally prevailed upon them to try it again?
A. Yes, sir.
58 Q. They went along with you over to see Mrs. Toland?
A. Yes, sir.
Q. There was yourself, Mr. Nelson, Warren and Amos Corey, and myself?
A. I don't think Warren Corey was there.
Q. We all went over there together?
A. Yes, sir.
Q. One of the Coreys took a check with him for the amount of the Doon mortgages?
A. Well, that was arranged for, but I don't remember how now.
Q. At the time we went in, both you and I explained to Mrs. Toland what they had come for, didn't we?
A. Yes, sir.
Q. And asked her to sign the deed?
A. Yes, sir.
Q. And before signing she said, "I suppose I'll have to, but I don't like to," or words that effect?
A. It was all talked over before you took the acknowledgment of the deed.
Q. Then she sat down at the table after that?
A. Yes, sir.
Q. She signed the deed?
A. When she signed it you asked her if she signed it with her free will and choice, and she said, "No, sir."
Q. Didn't she say that before?
A. When she sat down there.
Q. That's when she got up?
A. When you was taking the acknowledgment.
Q. What was it she said?

A. "No, sir; I do not. I do it because I'm obliged to" or "forced to;" I ain't certain which it was.

Q. Wasn't it to this effect: She did it to settle that matter, and because she had to settle it?

Mr. ALLISON: We object to any construction he might place upon the language.

The COURT: This is cross-examination.

Mr. ALLISON: Note an exception.

59 Mr. KIMBALL to the witness:

Q. Go on, answer my question.

A. I understood it was the circumstances of the mortgage forced her to do so—the whole situation together.

Q. Well, we had the contract of Corey Brothers there agreeing to move her house?

A. Yes, sir.

Q. After she signed the deed you and I witnessed it, didn't we?

A. I believe so.

Q. At the same table?

A. Yes, sir.

Q. Then, didn't you yourself hand me the deed from off the table?

A. I don't remember taking the deed up.

Q. Didn't I, then, after the deed was signed, pass her the contract and say, "Here's your contract," and then hand the deed to Mr. Corey and say, "Here's your deed, Mr. Corey," to Amos Corey?

A. I think you handed the deed to Amos Corey.

Q. In the presence of Mrs. Toland?

A. Yes, sir.

Q. Didn't Amos Corey or Warren or some of them then hand Mr. Nelson the check for the amount of the Doon mortgage?

A. I know the mortgage was paid off. Mr. Nelson was satisfied with the arrangement, I'm satisfied of that.

Q. Now, the arrangement between you and Corey Brothers on that day was this, wasn't it, that they were to cancel their indebtedness against Isaac Augustus Crawford, and they were to pay off all the Doon indebtedness, wasn't that the understanding?

Mr. ALLISON: We object to any arrangement between Mr. Ferrin and Corey Brothers.

Mr. KIMBALL to the witness:

Q. You reported the arrangement that you made to Mrs. Toland?

A. I did.

Q. Wasn't the proposition they made and the one you asked them to make, and the one that was finally made, that they were to pay and satisfy the Doon mortgages and pay that indebtedness?

60 A. Yes; and there was some little expense.

Q. They were to cancel their indebtedness against Isaac Augustus Crawford?

A. Yes.

Q. And there was a $10.75 personal bill of Mrs. Toland's at the store?

A. I don't remember; there was some small account besides. I think it was a small account with Judge Williams.

Q. It was ten dollars' indebtedness to Judge Williams for her?

A. I think so.

Q. What was the consideration of this deed, their doing these things?

A. Yes, sir.

Q. And whether you saw the check passed or not, you understood the Doon mortgages had been paid?

A. That's what I understood.

Q. There was no agreement that they were to be assigned to Corey Brothers at all—they were to be cancelled and satisfied?

A. That's what I understood.

Q. All of this indebtedness was to be absolutely cancelled and satisfied?

A. Yes, sir.

Q. After this deed was executed and delivered to Mr. Corey we all went away?

A. Yes, sir.

Q. Mr. Nelson went along to get the Doon money, wasn't that the reason for his presence?

A. If Mr. Nelson was there; I ain't sure about his being there, but I'm inclined to think he was.

Q. His interest in it was getting the Doon money?

A. Yes, sir.

Q. He had talked with you frequently about it?

A. Yes, sir.

Q. He had begun a suit for Doon?

A. That's what I understood.

Q. Don't you know that he held off on account of these negotiations after you came into it?

A. Yes, sir.

Q. Mrs. Toland was seen frequently between August, 1885, and January?

61 Mr. ALLISON: By whom?

Mr. KIMBALL to the witness:

Q. By yourself and by Mr. Nelson both?

A. By myself she was seen often and I understood by Mr. Nelson.

Q. You understood that from her?

A. Yes, sir.

Q. When you say understood you mean that she told you that Mr. Nelson had been to see her?

A. Yes, sir.

Q. I understood you to say in reply to counsel that negotiations had been pending two or three months before this deed was signed?

A. Yes, sir.

Q. You had seen Judge Williams and Mr. Nelson with reference to the matter?
A. Yes, sir.
Q. Did you report to her what they said?
A. Yes, sir.

Mr. ALLISON to the witness:

Q. Did you go there to see Judge Williams and Mr. Nelson at her request?
A. I don't know that I did. I went to see how these second mortgages would bear upon the place if it was sold.
Q. That was because you was thinking about loaning her the money?
A. Yes; in my own interest at that time.

Mr. KIMBALL to the witness:

Q. That was the first you had to do with it—about your own interest?
A. Yes, sir.
Q. After that time you continued to act in the matter?
A. Yes.
Q. Did you do so at her request?
A. Well, I think so. We talked the matter over and I went there and returned to her, and I talked to them. Sometimes I'd meet Amos Corey on the street, and he'd tell me how matters was going, and I went to see him.
Q. At her request you would go back and see them?
A. I have done—

Q. The very day the deed was executed wasn't you and
62 your wife stopping at her house?

A. We came down that morning.
Q. Weren't you down exclusively on that business that day?
A. I couldn't say I was exclusively on that business.
Q. Were you down on that business?
A. I came down on that business; that and other.
Q. And you were stopping at Mrs. Toland's house?
A. Yes, sir.
Q. You went to see Corey Brothers?
A. Yes, sir.
Q. After you saw them you went back and saw her again?
A. Yes, sir.
Q. And went from her back to them again?
A. I think that's correct.
Q. You went at her request, didn't you?
A. I suppose I must have done, under the circumstances.
Q. That is, you carried back to them the message of what she would do?
A. Yes, sir.
Q. Then it was we all went over there together?
A. Yes, sir.
Q. In the morning she refused to do it, and you came over and

reported to them and they refused to have anything more to do with it?

A. Yes, sir.

Redirect examination.

Examined by Mr. ALLISON:

Q. Do you remember any specific request on the part of Mrs. Toland to have you act upon that matter?

A. She requested me to see Corey Brothers and see what they would do in the matter.

Q. Upon any particular day?

A. I don't remember any particular day.

Q. Did she request you to represent her throughout the whole matter?

A. It was *done* at her wish that I done what I did do in
63 the matter.

Q. During these negotiations, Mr. Ferrin, did you know that Mrs. Toland had acquired—that William Toland had acquired all the rights Isaac Augustus Crawford had in that undivided two-thirds of the land?

A. I didn't understand it at first. I understood it before the matter was through.

Q. When did you first know that?

A. I can't tell you the time.

Q. Did you know that William Toland before his death conveyed this property to the plaintiff in this action?

A. Yes, sir.

Q. Do you know when he conveyed that?

A. No.

Q. Do you know she had that deed?

A. Yes, I say I know it; I never saw the deed, but I understood it to be so at the time from Mrs. Toland herself.

Q. You had received notice that she had a deed from William Toland?

A. Yes, sir.

Q. You understand——

Mr. KIMBALL: I submit that's matter-in-chief.

The COURT: Go on.

Mr. ALLISON to the witness:

Q. You knew they—she told you she had a deed from her husband prior to his death?

A. Yes, sir.

Q. Now, then, do you know whether Corey Brothers knew anything about that deed?

A. They told me they knew she had a deed, but it was not recorded.

Q. They told you they knew she had a deed, but is was not recorded?

A. Yes, sir.

Q. Now, when did they tell you this?
A. I can't tell you exactly—some time during the negotiations.
Q. Some time prior to the time she signed this deed?
64 A. Yes, sir.
Q. Did Corey Brothers ever say to you that that was the reason they wanted her to sign the deed?
A. No, sir.

Recross-examination.

Examined by Mr. KIMBALL:

Q. Isn't it the fact that Corey Brothers weren't very anxious to make this transaction?
A. They didn't seem to be just at the last—just before the deed was made.

Redirect examination.

Examined by Mr. ALLISON:

Q. Didn't seem to be?
A. No; Amos Corey told me he didn't think he'd have nothing more to do with it.
Q. Didn't they say the reason was their money was out at interest and they would just as lieve it would remain there—something to that effect?

The COURT: That's very leading.

Mr. ALLISON to the witness:

Q. Did they give any other reason?
A. The only reason they gave was it was so much trouble to get it fixed. She was so stubborn about doing anything about it.

Mr. KIMBALL to the witness:

Q. She was very notional?

Mr. ALLISON: That's a conclusion.
The COURT: Yes.

The COURT to the witness:

Q. I understood you to say a little while ago that you had inquired into these facts very fully?
A. Yes, sir.
Q. Did I understand you to say you advised her to make the transaction?
A. Yes, sir.
65 & 66 Q. Did you say that one of the reasons you advised her to make it was that at that time the place wouldn't bring enough to pay all these mortgages?
A. Yes, sir; under the circumstances I tried to sell the place for her myself and liquidate these mortgages, and I understood from the attorneys I talked to that when the place was sold that all these

mortgages was good and could be collected. If she sold it she would have relinquished her homestead interest, and it would have to be taken. The way I understood it was this: if this place was sold either under the mortgage or at a private sale, that these mortgages given by Crawford could be collected.

Q. That was because they were given before the deed was put on record?

A. Yes, sir.

Q. And the only notice they had was of her homestead interest?

A. Yes, sir.

Q. Her life interest, I mean; and when she sold, that it would be a relinquishment of that?

A. Yes, sir.

Q. That was the way it was figured out?

A. Yes, sir.

ISAAC L. CLARK, called for the plaintiff, being first duly sworn, testified as follows:

Examined by Mr. ALLISON:

Q. Where do you live, Mr. Clark?

A. Ogden city.

Q. How long have you lived here?

A. Since 1853.

Q. What is your occupation?

A. Merchandising.

Q. Where is your place of business?

A. Main street, between 3rd and 4th.

Q. Where is it with reference to the property owned by Mrs. Toland?

A. It is adjoining on the north side.

67 Q. You were one of the heirs, were you not, under the will of Mary Clark?

A. Yes, sir.

Q. Are you acquainted with the plaintiff in this action?

A. Yes, sir.

Q. How long have you known her?

A. I've known her ever since I can remember.

Q. Are you acquainted with the three Corey Bros. and Ira Spaulding?

A. Yes, sir.

Q. How long have you known them?

A. About thirteen years, I think.

Q. I will ask you, Mr. Clark, how long you have known that this property now in the possession of Mrs. Toland was encumbered by three mortgages in favor of Mr. Doon, of Terrace?

Mr. KIMBALL: That's immaterial.

The COURT: It's preliminary.

A. I got acquainted with the fact through—Mr. Nelson or Mr. Corey, I don't remember which, came to me and wanted to know if

I didn't want to buy that piece of property. He said it was encumbered by two or three mortgages, and that he thought that I could get the property at a bargain.

Q. Who came to you?

A. Mr. A. H. Nelson, and said that he thought — a bargain on the property, and I told him that I would enquire about it. I went to Mrs. Toland and was inquiring about the matter, and she said that there was a mortgage of $350.00 on it that she had sanctioned. I says, "They tell me that there is three or four or five mortgages on it." "Five mortgages on it!" and flew all to pieces. She says, "How dare anybody go to work and mortgage my property in that way!" She says, "Mr. Doon came to me and got my
68 consent to a mortgage of $350.00, and that's all I know about it." She says, "Don't you dare say the property"——

Q. When was that?

A. I don't know exactly when it was.

Mr. KIMBALL: I don't see the meter-ality of that.

Mr. ALLISON: He told more than I asked him for.

Q. What talk did you ever have with Corey Bros. with reference to these mortgages given by Isaac A-gustus Crawford to Doon?

A. I was talking to C. J. Corey on the corner of Main and Fourth street one time. I heard it was for sale and about the mortgages, and so I told him I thought it was a shame that the woman was beat out of the property in that way, and that she had a deed for Crawford's interest, and that he knew it from the time he sold it, and that it didn't look to me like a son would do the like, and that it didn't look to me like it was straight in law, and he told me his lawyer said it didn'd make any difference, so long as the deed wasn't on record.

The COURT: That who knew it from the time he sold it?

A. The boy.

Q. You mean when he mortgaged it?

A. Yes.

Mr. ALLISON to the witness:

Q. Hos reply was what?

A. His lawyer told him it didn't make any difference as long as her deed wasn't on record.

Q. Was that the whole conversation?

A. That was the conversation.

Q. About when did it take place?

A. O, awhile before this transaction.

Q. About how long?

69 A. Well, it was—must have been some two months, I guess.

Q. Did he say what attorney it was advised him that?

A. He didn't say.

Q. Which one of the Corey Bros. was that?

A. C. J. Corey.

Q. One of the defendants in this action?

A. I think so.

Q. Charles J. Corey?
A. Yes, sir.
Q. I understand you to say that in this conversation you informed him that there was a deed?
A. Yes; I told him that her son knew at the time he mortgaged it that she held this deed.

The COURT to the witness:

Q. When do you say that was?
A. About two months before this deed was made. I wouldn't be certain to the date. I think Mr. Corey told me he had a mortgage on the place. I think he told me he had one mortgage or two.

Mr. ALLISON to the witness:

Q. Mr. Clark, have you bought and sold much real estate here in town?
A. Yes; a great deal. I've bought more than I have sold.
Q. Are you familiar with the value of real estate?

Mr. KIMBALL: I submit that's not material.
The COURT: The question of value at this time is not one; they say in their complaint that the consideration was entirely inadequate, and you say that it was not, and the adequacy of price may be enquired into if it will throw any light upon the transaction.

Mr. ALLISON to the witness:

Q. Were you then familiar with the value of real estate?
70 A. Somewhat. I always had my opinion on real estate.
Q. From your knowledge of the value of real estate at the time the deed was signed, what would you say that the piece of property was worth?

Mr. KIMBALL: I submit that he has not shown his competency.
The COURT: He has shown that he has bought and sold.

The COURT to the witness:

Q. Did you handle any real estate before that time?
A. Yes, sir.
Q. Any in the vicinity of this property?
A. I was owning property adjoining that. I didn't buy it; it went to me.
The COURT: You may answer the question.
A. My judgment at the time was $150.00 a foot. She had an offer of $125.00 a foot, and she wanted to know what I thought about it. I told her I thought it was well worth $150.00. That was just before this transaction.

Mr. ALLISON to the witness:

Q. Let me refresh your memory. Isn't it a fact that you offered her that?
A. No, I dodn't offer her that, but I told here if I had the money

that I would take it at that, but I didn't have the money to invest, as I would like to get the property, as it adjoined mine.

Mr. KIMBALL to the witness:

Q. Isn't Frank's piece between hers and yours?
A. It wasn't divided at that time; Frank could have had either piece he wanted.

The COURT to the witness:

Q. How far beyond the Methodist church is this property?
A. It is this side of the Methodist church. It's two lots this side and it joins Clark's and Shaw's store; the open space this
71 side of there.
Q. You think it was worth $150.00 a foot last January?
A. That's the way I figured it.

Mr. MALONEY: I would like to ask Mr. Clark one question.
The COURT: Certainly.

Mr. MALONEY to the witness:

Q. Did you, in this conversation with C. J. Corey, tell him that William Toland had deeded this property to the plaintiff?
A. Yes; I told Mr. C. J. Corey. I was condemning the son for this, and I told him that the son was well aware of it at that time.

Mr. MALONEY to the witness:

Q. The deed from Isaac A-gustus to William Toland. Now, I'm getting at the fact whether you told him that William Toland had deeded this land to the plaintiff.
A. No, I didn't know anything about that. I supposed she was heir to it through her husband's death.

Mr. MARSH to the witness:

Q. You understood she received her right as being one of the heirs of the estate?
A. Yes; through her husband's death.

JOHN N. BROWNING called for the plaintiff.

Examined by Mr. ALLISON:

Q. Where do you reside.
A. Ogden.
Q. Where did you reside on the 23rd of January, 1886?
A. Ogden. I've been in Ogden 35 years.
Q. Have you ever been in the real-estate business?
A. Yes, sir.
Q. Were you in it at the time I speak of, the 23rd of January, 1886?
A. Yes, sir.
72 Q. I'll ask you if you knew the value of real estate on Main street at that time?
A. Yes, sir.

Q. Do you know this property where Mrs. Toland now resides?
A. Yes, sir.
Q. And do you know the value of that property per front foot at that time?
A. I had a piece of property just the other side of it will bear comparison.

I submit he can answer the question.
The COURT: Answer it directly.

A. I say about $175.00 a foot.
Q. Would that be for 150 feet deep, or how deep?
A. I think it was 300 feet deep.

The COURT to the witness:

Q. Do you judge that from what the price is now?
A. No, sir; it's been a steady increase since then.
Q. What do you think a piece of property would have sold for if put right on the market three years ago last winter and sold for cash?
A. I was going to say that I had other pieces in there and I expected to sell from $150.00 to $175.00 a foot.

Cross-examination.

Examined by Mr. KIMBALL:

Q. Did you sell any down there for that?
A. No, sir.
Q. There hadn't been a piece of property sold on Main street some five years before that time?
A. I don't know. On what part of Main street?
Q. On the east side of Main street and a square north of here.
73 A. O, yes; there had been several pieces sold.
Q. What ones?
A. Mrs. McGaw, where A. Lowe's place is.
Q. When?
A. Well, I don't know as I can quote the date without referring.
Q. Don't you know that George A. Lowe paid $40.00 a foot—bought it in 1885?
A. I didn't know that.

Mr. MALONEY: I move that be stricken out. It is nowhere near the property.
Mr. KIMBALL: It's right in the same block.
The COURT: He had a right to ask that if he didn't know.

A. I heard that it sold for $125.00, but I wasn't the agent that transacted the business.

Mrs. C. R. TOLAND call- for plaintiff.

Examined by Mr. MALONEY:

Q. In the answer there is an item of $10.87 as part consideration for this deed. Do you know anything about it?

A. Yes; I remember it; I didn't know at the price, but I found out afterwards; it was for Judge Williams to make a transfer.

Q. Who owed that to Judge Williams?

A. I told them that I hadn't the means to get a transfer, and so they offered the means to make a transfer.

Q. That's receipted here $10.87 due Corey Bros.?

A. I never heard of it; I didn't know what it was till since; I had forgotten all about it, but since it was brought up I remembered.

A. J. CHAMBERLIN, called for plaintiff, being first duly sworn, testified as follows:

Examined by Mr. MALONEY:

Q. Were you residing here in Ogden in January, 1886?

A. Yes, sir.

Q. You knew then the price of real estate?

74 A. I thought I was a pretty good judge.

Q. Do you know the property where Mrs. Toland lives, down on Main street?

A. Yes, sir.

Q. What would you say — was reasonably worth on January 23rd of 1886?

A. I was trying to buy it of her.

Q. Well?

A. And she wanted $175.00 a foot, I think it was, and she said it was 20 rods deep, and so at last I offered to give her $150.00 a foot, 150 feet deep. I thought she was going to take it, but at last she backed out and wouldn't take.

Q. Did you consider it worth $150.00 a foot then?

A. Yes, sir.

Q. For 150 feet deep?

A. Yes.

Q. It was 20 rods deep, was it not?

A. It was 20 rods deep. I wanted to buy 150 feet deep.

The COURT to the witness:

Q. When was that?

A. It was in 1886; along in the spring, I think.

Mr. MALONEY to the witness:

Q. How many feet front is there you wanted to buy?

A. Well, something over 40 feet front, I guess; I think a little over 44 feet front.

Cross-examination.

Examined by Mr. KIMBALL:

Q. You mean the whole piece, then?
A. Yes.
Q. That's the vacant piece, and the one here house is on, too?
A. Yes.

75 Mrs. C. R. TOLAND, recalled for examination by the court:

Q. Mrs. Toland, you understand when this transaction was made about how much the mortgages were?
A. Well, I asked Mr. Corey once about how much he considered they cost him—remember, I have never received a cent for it—and he said, "I have never made a calculation."
Q. In your talk with Mr. Ferrin and with all these parties, you never had heard how much they claimed?
A. Seven or eight hundred dollars, I understood in the first place. I don't know where I got the understanding from.
Q. You thought the claims that were troubling you were some seven or eight hundred dollars, or a thousand?
A. Somewhere in the neighborhood of a thousand, and I never heard any difference until the other day I heard it was twelve hundred.
Q. That was the claim that was making you sign that deed?
A. Yes, sir.
Q. And it was because you couldn't pay it?
A. Yes, sir.
Q. What you were trying to figure on was to pay it in some other way than to sell the property?
A. I wanted to pay $350.00.
Q. When you concluded that you couldn't do that and that you had got to make the transaction—that is, deed the land over?
A. When I could not pay it, I could not do it in any other way, and they said they could turn me out.
Q. And not being able to pay and not being able to settle it in any other way, you had to let the land go?
A. Yes; I would have sold my property, but those mortgages I had never heard of come up and I couldn't do anything.
Q. But if you had had the money and could have paid all these off, then you understood you wouldn't have been disturbed—
76 if you had had the money and had paid off all those claims?
A. I wasn't holding for anything but $350.00.
Q. But they were claiming that you were?
A. I guess they didn't claim that I was bound for anything of the kind.
Q. But they claimed your land was?
A. As long as I lived they didn't put in any claim for that.
Q. They claimed it was after that?
A. Yes.
Q. You understood that if you had had the money and had paid those claims off that they could not have taken your land?

A. Yes, I knew that.

Q. Did you testify that you had been offered $150.00 and $175.00 for your land a foot?

A. Yes; if I would give a deed, Mr. C. Chamberlain would give me $150.00; they told me the land was worth $175.00.

Q. What was the reason you didn't sell the land and pay all these mortgages?

A. Because people were afraid on account of all those mortgages.

Q. If the mortgages were taken out of the purchase price, they wouldn't be afraid?

A. They said they would come on my place after my death, and they were afraid to have anything to do with it.

Q. What is the reason? If you could sell the land, say 20 feet, at $150.00 is three thousand dollars?

A. Yes.

Q. You understood that it was only ten or twelve hundred dollars? If you sold the land to some one, taking out the full amount of the claim and letting them pay it in full, didn't you understand that would settle it?

A. No; I understood that it was tied up with these mort-
77 gages, and there didn't anybody come forward and tell me. I was walled in.

Mr. MALONEY to witness:

Q. When people found out the condition of this land, could you sell it at all?

A. No, I couldn't sell it at all.

Q. After it was known about the mortgages?

A. No.

The COURT: There couldn't be any trouble about selling subject to all mortgages.

Mr. MAHONEY to witness:

Q. I want to know if the proposition was made that if they would pay you $150.00 a foot, and you was to go and pay off the mortgages?

A. No; of course, they didn't know anything about the mortgages, only I said I couldn't give any title now. I was waiting till I could sell a lot and get so I could.

Q. Didn't they tell you you could take this money and go and discharge these mortgages?

A. No.

Q. Did you understand that you could?

A. I understood that I could not sell the property at all.

Q. That you could do nothing at all with it?

A. No.

Q. Did you have any consultation with any lawyer about your rights before you executed this deed to Mr. Corey?

The COURT: She said she didn't; that has been asked her.

A. I spoke to a lawyer long before this—before I signed this, of course. They said I couldn't do anything with it.

Q. A lawyer gave you that advice?

A. Yes, sir.

Q. Was that the reason that you thought you had to do this?

A. Yes; I was told by a lawyer that I could do nothing
78 with it.

Plaintiff rests.

Mr. KIMBALL: We move at this time for a judgment of nonsuit on the ground that none of the allegations of fraud have been proven, and there is no evidence tending to prove it.

The COURT: I think it is best to have the testimony of the defendant upon the transaction of the giving of the deed—the final execution.

ALFRED H. NELSON, called for the defendant being first duly sworn, testifies as follows:

Examined by Mr. KIMBALL:

Q. Your name is A. H. Nelson?

A. Yes, sir.

Q. You are an attorney-at-law?

A. Yes, sir.

Q. Were you such in 1885?

A. Yes, sir.

Q. Ask you to state if you were the attorney for Mr. Doon.

A. Yes, sir.

Q. That's the same Doon to whom the mortgages were given that are described in the complaint in this action?

A. Yes, sir.

Q. Did you file that complaint for him in August 13th, 1885?

A. I did.

Q. Subsequent to the filing of that complaint, what, if any, consultation did you have with Mrs. Toland with reference to the subject-matter of the suit.?

A. Yes, sir.

Q. How long after the filing of the complaint?

A. First time probably two or three weeks—very soon after.

Q. State what the substance of your consultation was.

A. Well, Mrs. Toland didn't know anything about any mortgages but one, and she was very much excited about it, to think
79 there were other mortgages on the property she didn't know anything about, and she would try and pay off the one, and the rest she knew nothing about, and she would see Mr. Ferrin and get the money and pay the mortgage she owed, and the rest could get along the best they could.

Q. In that conversation, what did you say about the Corey Brothers' mortgages?

A. I told her the Corey Brothers had two mortgages.

Q. The defendants?

A. Certainly.

Q. What, if anything, did you say to her about this suit having begun?

A. I told her that there had been a suit begun and the mortgages would be foreclosed—they would all be foreclosed unless they were paid.

Q. What did she say then, if anything?

A. Well, that is what she said, that she would see Mr. Ferrin and get the money and pay off the one.

Q. Did you see her after that time?

A. I saw her there several times after that; yes, sir.

Q. What, if anything, do you know about either Corey Brothers, the defendants in this, seeing her subsequent to the beginning of this action?

A. I went there with Amos Corey, and I don't know but that I went with George Corey. I went there two or three times with some of the Coreys, and with Mr. Ferrin.

Q. What was the subject of your conversation with her at that time?

A. Well, there was a proposition on the part of the Corey Brothers to pay off all the mortgages and buy all the property.

Q. What was your object in going there at that time?

A. My reasons for taking an interest in the matter was to get Mr. Doon's money. I made the loans for Mr. Doon on the land, and of course felt an interest in seeing him get his money out, as I
80 felt myself bound to help him out.

Q. You didn't go there as counsel for Corey Bros.?

A. No.

Q. What was the proposition they made to her?

A. They made the proposition they would pay off, in the first place. There was a proposition made by Judge Williams, I think—at any rate he took charge of it—that he would bring the matter before the probate court and get Mrs. Toland set off onto the other piece, and then Corey Bros. were to remove her house onto the other land, and Judge Williams attempted to have that done by the probate court, and the probate court refused to do it; didn't see how it would benefit the minor heirs, and so refused to do it.

Q. Frank Crawford's piece was the vacant piece?

A. Yes.

Q. Wasn't the proposition to transfer the titles?

A. Yes; the first proposition was to give Frank Mrs. Toland's piece and get it for her, and then she was to deed her half to pay off these mortgages, all of them.

Q. And that matter fell through?

A. It fell through.

Q. How long was that before this deed was made and acknowledged?

A. Several months.

Q. Was it not directly after you had filed thi- complaint?

A. It must have been in September. The complaint was filed in August.

Q. State whether you saw her subsequent to that time, after the falling through of the probate court.

A. Yes, sir.

Q. With Corey Brothers?

A. With one of them and Mr. Ferrin.

Q. How long was that before the deed was made?

A. I think the day the deed was dated; it was made t-e 8th of January, was one of the times. I saw her several times.

Q. Well, what was the subject of the conversation there, then?

81 A. At that time the proposition was for Corey Brothers to take a deed of her interest in the property and move her house onto Frank's land.

Q. And pay off the mortgages?

A. Pay off the mortgages, of course.

Q. What was said in reference to that by her?

A. Well, she said she wouldn't do it.

Q. Did you see her again before the day the deed was executed?

A. Yes, sir.

Q. Who with, if any person?

A. There was always some person. I am not certain whether Mr. Ferrin was with me the next time I saw her or not, but I think he was.

Q. Well, what was the conversation about then?

A. It was about the same topic, and we were advising her and trying to get a settlement of it.

Q. Well, what did she say or do?

A. She agreed to do it; she would sign the deed.

Q. Wasn't the morning the deed was executed, if you recollect?

A. It's possible. It's been a long time ago. It was before the deed was executed, but I don't know if it was that same morning or not. I think we had a conversation some days prior.

Q. Well, she then agreed to do it, did she?

Mr. MALONEY: I object as leading.

Mr. KIMBALL:

Q. That's what you said?

A. Yes, sir; she agreed she would give the deed.

Q. What did you do then?

A. We reported the matter to Corey Brothers.

Q. In fact, what was done?

A. We reported the matter to Corey Brothers.

82 Q. What happened? What, if anything, was done? Did she execute it at that time?

A. No; she executed not at that time but subsequently.

Q. Were you present at the time she executed this deed?

A. Yes, sir.

Q. Who else was present?

A. Mr. Ferrin, Mrs. Ferrin, myself, Amos Corey, and I am not certain as to one of the others. It was one of the Corey Brothers, I think, but I am not certain, and yourself.

Q. What occurred when we went there?

A. Well, we all went in there and Mr. Ferrin did most all of the talking. He explained to her that we had got the matter arranged; that Corey Brothers had agreed to do certain things.

Q. Did he tell her what things?

A. That they had agreed to pay off all those mortgages and move her and put the house in good condition; and I know we had a good deal of talk about how it would damage the house in moving and what would be the effect and how much they would repair it in case it was damaged. It was all talked over and Mr. Ferrin did most of the talking. Mr. Ferrin and you had all the papers and you read the deed and gave it to her and she signed it. You asked her if she did it freely and voluntarily and for the uses and purposes therein mentioned, and she said she didn't like to, but she did not see any other way to do, or something to that effect. It's been a long time ago and I cannot repeat her exact words, but that's my best judgment as to what her words were. I know she said she didn't like to do it.

Q. Wasn't that before she signed the deed that she said she didn't like to do it, but under the circumstances she guessed she would have to do it?

83 The COURT: That is leading.

Mr. KIMBALL: I asked her the question.

The COURT: It can hardly be impeaching.

Q. After she signed it and acknowledged it, what was done?

A. Mr. Ferring picked up the deed and gave it to you. You had the contract that Corey Brothers had signed, agreeing to move the house. You handed the contract to her. She was sitting at the table and you handed it to her, and then you turned to Mr. Corey—Amos Corey—and handed him the deed. You said, "Mrs. Toland, here's your contract, and Mr. Corey, here's your deed." And Mr. Amos Corey handed me a check for Mr. Doon's part of the payment; that was what I was after.

Q. You subsequently satisfied that mortgage of record?

A. Yes, sir; I made a deed of release and Mr. Doon signed it and it was filed for record.

Mr. KIMBALL: Mr. Maloney, do you think it necessary to introduce the record here?

Mr. MALONEY: I am not particular about that.

Mr. KIMBALL: I will state that it does appear released of record.

Q. Then we went away from there?

A. Yes, sir.

Cross-examination by Mr. MALONEY:

Q. Did you negoti-te the loan for Doon?

A. Yes, sir.

Q. At that time did you know that Isaac A-gustus Crawford had conveyed his interest to William Toland?

A. No, sir.

Q. When did you first ascertain the fact?

A. I think it was after I had filed the complaint to foreclose the mortgages. It was a long time after Corey Brothers' mortgage and I know there had been a good deal of talk about the mort-
84 gages, and so I ascertained the fact. I ascertained it from Mrs. Toland herself. I had filed the complaint before I had a talk with her about the mortgages.

Q. When was that?

A. That was in August.

Q. Then you had dealing with Corey Brothers about this money in the Doon business?

A. Yes, sir.

Q. Didn't you tell Corey Brothers that she had a deed from Isaac A-gustus Crawford to her husband?

A. I don't know that I did.

Q. Didn't you tell them that he had conveyed his interest to Mrs. Toland?

A. I don't know.

Mr. KIMBALL: That's immaterial.

The COURT: They must have know- that or they would not have taken her deed.

Mr. MALONEY:

Q. At the time this mortgage was executed to Corey Brothers did they have any knowledge of this?

A. They did not.

Q. You don't know?

A. I do know, because I made the abstract and the deed. He asked me about it, and I told him Mrs. Toland had a life estate in the property, but she had signed a mortgage to H. G. Doon prior to this.

Q. That was for $350.00?

A. Yes.

Q. In all these transactions you were anxious that the trade be consum-ated and Coreys get the property?

A. No, sir; I was anxious to get Mr. Doon's money.

Q. You wanted this transaction made to get that money?

A. Certainly.

85 Redirect examination by Mr. KIMBALL:

Q. What, if any, threats did you make to Mrs. Toland about turning her out in the street?

A. I never made any threats. I talked to Mrs. Toland as I always thought for her best interest. I never said a word to her except advising her what she ought to do.

Q. Did you advise her what the effect of these mortgages was?

A. Yes, sir.

Q. You were there several times with Corey Brothers?

A. Yes, sir.

Q. What threats did they make to her about turning her out into the street?

A. None whatever. They told her they would rather lose the money than turn her out or cause her trouble; that they would move her house and fix it up for her or do anything for her they could. Amos Corey told her that a half dozen times.

Recross-examination by Mr. MALONEY:

Q. I want to ask Mr. Nelson if he didn't advise her, as the best thing she could do under the circumstances, to accept the offer of Coreys?

A. Certainly. The trouble was to get Corey Brothers to make the turn.

Mr. KIMBALL to the witness:

Q. They refused to make the trade?

A. They did. If it hadn't been for Ira Spaulding they wouldn't have made it.

86 CHARLES J. COREY, called for defendants, being first duly sworn, testified as follows:

Examined by Mr. KIMBALL:

Q. You are one of the defendants in this action?

A. Yes, sir.

Q. Were you here at the time of the execution of this deed of Mrs. Toland's?

A. No, sir; I was not.

Q. You say you wasn't in Ogden at that time?

A. I was in Ogden, but I was not at her residence.

Q. Were you at the store that day at any time when Mr. Ferron was there?

A. Yes, sir.

Q. Prior to that time had you seen Mrs. Toland in reference to this matter?

A. Yes; I was there with Mr. Ferrin and Mr. Nelson, and I think one of my brothers.

Q. What was the subject of your conversation at that time, if you had any?

A. Well, it was with regard to moving her house onto the other premises in case the transfer was made. We went there at the suggestion of Mr. Ferrin and Mr. Nelson.

Q. What was your proposition with reference to the property?

A. The proposition was to move her house onto the other lot.

Q. What else were you to do?

A. We were to pay off these Doon mortgages.

Q. And what were you to do with your own?

A. Cancel our indebtedness on the property.

Q. Your mortgages were cancelled prior to the transfer of this property to you?

A. Yes, sir.

Q. Did you cancel those mortgages?

A. No; it was my brother Amos.

87 Q. Can you state how that cancellation came to be made?

A. Yes, sir.

Q. State it to the court.

A. We were needing the money that Mr. Crawford owed us and the gentleman came to us one day and said he could borrow it from some gentleman north of the river here, and my brother went to the office and they made the arrangement there, and he went up and cancelled the mortgage; and when he came back the parties that were going to furnish the money had backed out and wouldn't furnish it.

Q. That is, they requested you to cancel your mortgage and agreed to give you the money?

A. Yes, sir.

Q. Then the party that was to advance the money backed out?

A. Yes, sir.

Q. So you received nothing from that cancellation and satisfaction?

A. Nothing at all.

Q. Neither from Mrs. Toland nor from Isaac A-gustus Crawford?

A. No, sir.

AMOS B. COREY, called for defense, being first duly sworn, testifies as follows:

Examined by Mr. KIMBALL:

Q. You are one of the defendants, are you?

A. Yes, sir.

Q. Your name is Amos B. Corey?

A. Yes, sir.

Q. Mr. Corey, do you remember of Mrs. Toland executing this deed?

A. Yes, sir.

Q. Now you may state whether you saw Mr. Ferrin on that day, and before this deed was executed.

A. I did.

88 Q. What time in the day, and where did you see him?

A. I couldn't state exactly, but I rather think in the morning.

Q. Where?

A. Down in the store.

Q. How did he happen to come there?

A. He came down there and wanted us to sign the deed.

Q. Do what?

A. Wanted us to go over and settle up this business that he had been negotiating for. He had been, as I understood it, working for Mrs. Toland and bringing us together in that affair, and some way, I don't know now, but word came over there—I think maybe a little boy, but I don't think I heard it at the time—she said she wouldn't do it. We had been running around trying to settle it, and he

finally said he wished we wouldn't be too sensitive; he'd like to get the matter settled up. Finally we went over. When we went in she said she didn't send; kind of blamed the boy for carrying the news that didn't concern him; she didn't intend to say she wouldn't sign it. She begged pardon, and then—I don't remember all that happened there, any more than the transfer of the papers. I signed her contract for moving the building, and you gave me a deed.

Q. You saw her sign the deed?
A. Yes, sir.
Q. Was the deed read over to her before she signed it?
A. Yes, sir.
Q. Was it delivered to you there?
A. Yes, sir.
Q. By whom?

Mr. MALONEY: I except to his leading the witness.

89 Q. By whom?
A. By you.
Q. What, if anything, do you know of a check being delivered to Mr. Nelson there?
A. I do.
Q. Who delivered it to him?
A. I either handed the check to you or him; I don't remember.
Q. State whether or not it was handed to her in the presence of Mrs. Toland, yourself, and these other parties.
A. It was.

Mr. KIMBALL: I now offer in evidence this deed.
The COURT: It may be received.

Marked Def't-' Ex. A, P. E. K. (Here insert deed, Ex. "A.")

JAMES N. KIMBALL, called for defendant-, being first duly sworn, testified as follows:

I will state that as far as any negotiations between Mrs. Toland and Corey Brothers are concerned, that I never knew anything about them or had anything to do with them, but on the 8th day of January they came to me and requested me to come over to Mrs. Toland's with it. Subsequently on that day I was informed that the proposition which had been pending had fallen through. I then retained the deed in my office. On the 23rd day of January, in the afternoon, one of the Corey Brothers came after me to come down to the store. I went there and met Bishop Ferrin and Amos and Warren Corey, and they stated to me that they wanted me to come over and take an acknowledgment to this deed that I had formally prepared, and they wanted me to prepare a contract to the effect that Corey Brothers would, in addition to the consideration money stated in this deed, remove the house and buildings of Mrs. Toland off the land where they now stand onto the adjoining lot, which was Frank Craw-

ford's. I prepared the contract. I think Mr. Ferrin stated to
90 me about what the contents of it should be. I prepared it, went over to the store, and Mr. Nelson was there, and we all four, Warren Corey, Amos Corey, Mr. Ferrin, Mr. Nelson and myself, went over to Mrs. Toland's house. Mrs. Ferrin was there with her at the time. When we went in Mr. Ferrin stated what we had come for, and my recollection of that is that I read over the contract with reference to moving the property—the house—and Mrs. Toland said something about the ceiling breaking or the plastering being broken by the moving, and either Mr. Ferrin or myself spoke up and said that under the contract they would have to put it in as good shape as it then was in, so that any breaking of that character would be repaired. Mrs. Toland said something about it being a hard thing for her to do, to make this deed, because of the fact that it wasn't her debt, but she didn't see any other way out of it. Then she got up, sat down at the table, and I handed the deed to her and she signed it, and I asked her then if she acknowledged that to be her free will and deed. She made the remark, laughingly, that it wasn't her free act and deed; that under the circumstances it was paying somebody else's debt, but she signed it because she saw no other way out of it. That was the understanding I got of it at the time, and in that light it might be a forced acknowledgment. That was the substance of it. I don't remember her exact words. With that Mr. Ferrin and myself signed it as witnesses, and whether Mr. Ferrin — me the deed or Mrs. Toland, or I picked it up, I don't remember, but any way I had that deed, after its execution, in my hands, and the contract that had been executed by Corey Brothers in my hands, and the check for the amount of the Doon mortgage signed by Corey Brothers in my hands, and
91 I turned to Mrs. Toland and said to her, "Here's your contract," it having been previously read to her, and Amos Corey was standing by, and I said, "Here's your deed, Mr. Corey," and I said, "Mr. Nelson, Here's your check," and I delivered the check, and the deed, and the contract to the parties all right there, and then we all, except Mr. Ferrin and *her* wife, left the house, and I never heard anything about any trouble with reference to the execution of that deed until the complaint was served here on Corey Brothers, and in the meantime we had prepared to move some three or four different times, and Mrs. Toland was sick, and I think after this complaint was served.

Mr. ALLISON: That don't make any difference, after this deed, so far as we are concerned.

Mr. KIMBALL: It wasn't fulfilled till after the house was moved and we postponed while she was sick, and the last time was just before the service of the summons in this case that they went there to move the house.

Mr. MALONEY to the witness:

Q. How do you know? Did you go with them?

A. I saw the parties there; yes, sir. It was reported that Mrs. Toland refused, and I went up there and saw the parties there.

Mr. MALONEY: All you know was reported to you.

The above is all the evidence that was introduced, heard, or considered on the trial of the above-entitled action.

Affidavit of reporter.

92 *Specifications of Particulars in which the Evidence is Insufficient to Sustain the Findings and Decisions of the Court.*

(1.) The tenth finding of fact is not supported by the evidence for the reason that there was no competent evidence introduced on the trial, and there is no evidence whatever as to the indebtedness of the said Isaac A-gustus Crawford to the said defendants.

(2.) The 11th finding of facts is wholly unsupported by any evidence whatever. The plaintiff was shown to be in the actual possession all the time, and such possession was notice to the said Doon and defendants of her rights in and to said property. There is no evidence in the record that the said Doon or the said defendants did not know of the fact that the said Isaac A. Crawford had sold and conveyed the said land to William Toland, or that the said William Toland had not conveyed said land to plaintiff.

(3.) The 15th finding of fact is wholly unsupported by the evidence introduced on the trial of this action; on the contrary, the evidence shows conclusively that the plaintiff did not sign, execute, deliver, or acknowledge the said deed freely, voluntarily, or understandingly. Misrepresentations of facts and threats of throwing her into the streets were made to induce her to sign the said deed.

(4.) There is no evidence showing that the recited consideration in the deed of $1,236.00 was the fair and adequate consideration for the land so conveyed. This finding is wholly unsupported by the evidence.

(5.) The 16th finding is wholly unsupported by any evidence, but the evidence shows the very contrary, that she did not understand the facts nor her rights in the matter; that she was illy advised as to the facts and her rights in and to the land.

93 (5.) The 19th and 20th findings of facts are not supported by the evidence.

Errors of Law.

The court erred in admitting in evidence, over the objection of the plaintiff, the conversation, statements, declarations, and opinions of R. K. Williams, called in the record "Judge Williams," to the plaintiff.

(2.) The court erred in admitting, over plaintiff's objections, evidence of the object, intention, and purposes of the plaintiff in the proceedings of the probate court and the orders, judgments, or decrees of the said court, and the reasons of the said court in disallowing the change of plaintiff's lot for Frank Crawford's lot.

(3.) The court erred in admitting in evidencet he deed, so called, from plaintiff to defendants, when the evidence showed that it was

not signed, executed, or delivered by plaintiff; that she signed it because she was forced to do so; that she did not do it freely, voluntarily, or understandingly.

(4.) The court erred in admitting, over plaintiff's objections, declarations, admissions, and statements and conversations of Josiah M. Ferrin to the plaintiff. The evidence shows that at most Ferrin was endeavoring to borrow money for plaintiff.

(5.) The court erred in admitting, over plaintiff's objections, conversations, statements, and admissions and propositions of compromise between Alfred H. Nelson and plaintiff.

94 (6.) The court erred in admitting, over plaintiff's objections, the statements, conversations, and opinions of certain attorneys as to the validity of the Doon mortgages on the land, made and testified to by Josiah M. Ferrin.

(7.) The court erred in admitting, over plaintiff's objections, the understanding of the witness, Josiah M. Ferrin, as to the surrounding circumstances attending the execution of the deed from plaintiff to defendants.

(8.) The court erred in ordering a decree, as it did, for the defendants.

The plaintiff will rely on each and every of the foregoing assignments of error on the hearing of the cause in the supreme court.

(Signed) THOMAS MALONEY,
Att'y for Appellant.

95 First District Court Minutes, May Term, 1889.

CATHERINE R. TOLAND
vs.
GEORGE L. COREY *et al.*

Order Overruling Motion for a New Trial.

It is ordered that the motion for a new trial in this cause be, and the same is hereby, overruled and denied.

H. P. HENDERSON, *Judge.*

96 Ogden City, Utah, May 15th, 1889.

THOS. MALONEY,
Att'y for Appellant.

Received the above on this May 16th, 1889.

KIMBALL & WHITE,
Att'ys for Def't.

Defendants have no amendments to propose to this statement.

KIMBALL & WHITE,
Att'ys for Def'ts.

May 24th, 1889.

I, Henry P. Henderson, judge of the said court, do hereby certify that the above and foregoing statement of the plaintiff on motion

for new trial and for appeal is full, true, and correct, and the same is hereby so certified and by me allowed.

H. P. HENDERSON.

Done at the city of Ogden, Utah Territory, this 24th of May, 1889.

Filed May 24th, 1889.

H. H. HENDERSON, *Clerk.*

97 CATHERINE R. TOLAND
vs.
GEORGE L. COREY *et al.*

In the above-entitled action the plaintiff is hereby allowed to and including the 10th day of June, 1889, within which to prepare, file, and serve her notice of appeal — undertaking *an* appeal.

Ogden, Utah, May 31st, 1889.

H. P. HENDERSON, *Judge.*

Filed June 7th, 1889.

H. H. HENDERSON, *Clerk.*

98 In the District Court of the First Judicial District, Weber County and Territory of Utah.

CATHERINE R. TOLAND, Plaintiff,
vs.
GEORGE L. COREY *et al.*, Defendants.

Notice of Appeal.

To the said defendants and Messrs, Kimball & White, their attorneys, and H. H. Henderson, clerk:

Take notice that the plaintiff in the above-entitled action hereby appeals to the supreme court of the Territory of Utah from the order made and entered in this court on the 28th day of May, 1889, denying plaintiff's motion for a new trial, and from the judgment and decree made and entered against her on the 29th day of April, 1889, and from the whole thereof.

Ogden City, Utah, June 7th, 1889.

THOMAS MALONEY,
Attorney for Plaintiff.

OGDEN, *June 10th*, 1889.

I acknowledge that this notice was served on me June 10th, 1889, but I do not intend to waive any objections I may have to the service of this acknowledgment, but expressively reserve all such objections, and especially the objection that plaintiff has no right to take an appeal at this time, he having heretofore served on me a notice of appeal. Trial May 29th, 1889.

J. N. KIMBALL,
Att'y for Def'ts.

99 In the District Court of the First Judicial District, County of Weber and Territory of Utah.

CATHERINE R. TOLAND, Plaintiff,
vs.
GEORGE L. COREY *et al.*, Defendants.

Order.

In the above-entitled action, by consent of the respe-tive attorneys therein, and good and satisfactory reasons therefore appearing to the court, it is hereby ordered that a printed transcript of the record on appeal to the supreme court of the Territory of Utah be, and the same is hereby, dispensed with, and the appellant is hereby relieved of the requirements of rule 5 of the said supreme court.

Ogden City, Utah, May 29th, 1889.

HENRY P. HENDERSON,
Associate Justice.

Filed June 7th, 1889.

H. H. HENDERSON, *Clerk.*

100 TERRITORY OF UTAH, } ss:
County of Weber, }

I, H. H. Henderson, clerk of the district court of the first judicial district of the Territory of Utah, do hereby certify that the foregoing is a full, true, and correct copy of the judgement-roll, notice of intention to move for a new trial, order extending time to file statement on motion for a new trial, statement of case, order overruling motion for a new trial, and notice on appeal in the hereinabove-entitled action.

And I further certify that an undertaking on appeal in due form has been properly filed in my office.

Witness my hand and seal of said court this 26th day — August, A. D. 1889.

[SEAL.]

H. H. HENDERSON, *Clerk,*
By G. B. BEST, *Deputy Clerk.*

101 In the Supreme Court, Utah Territory.

At a session of said court held on the 14th day of January, A. D. 1890, present and presiding Zane, Ch. J., and Henderson and Anderson, JJ.

CATHARINE R. TOLAND, Appellant,
vs.
GEORGE L. COREY *et al.*, Respondents. } Appeal from First District.

This cause, coming on regularly for hearing, was argued by Thomas Maloney, for appellant, and by James N. Kimball, for respondents, was submitted, and taken under advisement (Henderson, J., not sitting).

Regular June Term.

MONDAY, *June 2nd, A. D.* 1890.

A session of the supreme court was held this day, present and presiding all the justices thereof.

CATHARINE R. TOLAND, Appellant,
vs.
GEORGE L. COREY *et al.*, Respondents. } Appeal from First District.

This cause having been heretofore argued and submitted, and the court being sufficiently advised thereon, it is now here considered, ordered, and adjudged that the judgment of the district court therein be, and the same is hereby, reversed and the cause remanded, with direction to the district court to have entered a decree in ac-
102 cordance with the opinion handed down by the court, and that the respondents pay the costs of this court and the costs of the district court up to date.

Opinion of the court by Blackburn, J.; Zane, Ch. J., and Anderson, J., concurring.

A session of the supreme court was held this 13th day of June, A. D. 1890, present and presiding all the justices thereof.

CATHARINE R. TOLAND, Appellant,
vs.
GEORGE L. COREY *et al.*, Respondents. } Appeal from First District.

In this cause respondents, by their counsel, James N. Kimball, pray the allowance of an appeal from the judgment of this court, heretofore rendered herein, to the Supreme Court of the United States, and ask that this court make and file its findings of fact to accompany the record.

On suggestion of same counsel, no action was taken by the court in order that the appellant may be heard at the next session of the court, and in the meantime it is ordered that remittitur be stayed.

A session of court was held this day, Friday, July 11th, A. D. 1890, present and presiding all the justices thereof.

CATHARINE R. TOLAND, Appellant,
vs.
GEORGE L. COREY *et al.*, Respondents, } Appeal from First District.

103 In this cause this day the appellant submits her request for findings, to be made and filed by the court to accompany the record on appeal to the Supreme Court of the United States.

A session of court was held this day, Saturday, July 12th, A. D. 1890, present and presiding all the justices thereof.

CATHARINE R. TOLAND, Appellant,
vs.
GEORGE L. COREY *et al.*, Respondents,
} Appeal from First District.

Upon application therefor by counsel for respondents, it is ordered that remittitur be further stayed pending disposition of the matter of filing findings of fact and allowance of an appeal in this cause heretofore submitted.

104 In the Supreme Court of the Territory of Utah, July 28th, A. D. 1890.

CATHERINE R. TOLAND, Plaintiff and Respondent,
vs.
GEORGE L. COREY *et al.*, Defendants and Appellants.

Findings of the Court.

Now comes the supreme court of the said Territory of Utah, on this 28th day of July, 1890, and make and file the following findings of facts to accompany the record in this cause on an appeal to the Supreme Court of the United States:

Findings of Facts.

I.

That the appellant, Catherine R. Toland, is the widow of William Toland, deceased; that the said William Toland died intestate, at Ogden City, Utah, on the 28th day of January, 1881; that the appellant, previous to and at the time of her marriage to the said William Toland, was the widow of Patriot L. Crawford, deceased; that the said Patriot L. Crawford died on or about the year 1868; that he left as issue of his said marriage with appellant three children, to wit, Isaac Augustus Crawford, Minnie Crawford, and Frank Crawford.

105 II.

That the said appellant, Catherine R. Toland, is the daughter of Mary Clark, deceased; that the said Mary Clark died testate, in Ogden City, Weber county, Utah Territory, on the 12th day of December, 1878, leaving both real and personal property in the said city of Ogden, Territory of Utah.

III.

That the will of the said Mary Clark was duly admitted to probate by the probate court of the said county of Weber on or about the 24th day of January, 1879; that by the terms of the said will the following-described real estate, to wit, "A part of lot three (3), in block thirty-one (31), of plat 'A,' Ogden City survey, viz., beginning at the southwest corner of said lot three, thence north sixty-three (63) feet, thence east fifty (50) feet, thence north twenty (20) feet

thence east to the east line of the said lot, thence south eighty-three (83) feet, thence west to the place of beginning; that the said premises were divided as follows, to wit: An undivided one-half thereof to Isaac Clark, an undivided two-thirds interest to Isaac Augustus Crawford and Frank Crawford, with the use of the said undivided two-thirds thereof to appellant, the mother of the said Isaac Augustus Crawford and Frank Crawford, for and during her natural life.

IV.

That on the 16th day of March, 1880, the said William Toland, then the husband of the appellant, purchased of and from the said Isaac Augustus Crawford his said interest in the estate of the
106 said Mary Clark and in and to the land and real estate devised in and by the said will of the said Mary Clark, paying to him, the said Isaac Augustus Crawford, the sum of one thousand ($1,000.00) dollars therefor, and on the said 16th day of March, 1880, the said Isaac Augustus Crawford, for and in consideration of the said sum of one thousand ($1,000.00) dollars to him in hand paid, made, executed, acknowledged, and delivered to the said William Toland a good and sufficient warranty deed of all his said interest under and by said will in and to the land and real estate so devised by the said will of the said Mary Clark as aforesaid.

V.

That on the 26th day of November, 1880, the said William Toland, then the husband of appellant, for a good and valuable consideration therein expressed, to him, the said William Toland, moving, and also in consideration of love and affection he bore towards this appellant, his said wife, made, executed, acknowledged, and delivered to this appellant a good and sufficient deed of the said interest in and to the said real estate, which he had purchased of the said Isaac Augustus Crawford, as set forth in finding three (3).

VI.

That on the 3rd day of March, 1881, the probate court of the said county of Weber made and entered a decree of distribution of said real estate belonging to the said estate of the said Mary Clark, deceased, and in and by the said decree distributed and apportioned said real estate as follows, to wit: An undivided one-third part thereof to the said Isaac Clark and an undivided two-thirds
107 part thereof to the said Isaac Augustus Crawford and the said Frank Crawford, and a life interest in the said undivided two-thirds thereof to the appellant for and during her natural life, and commissioners were by said probate court appointed to partition the said real estate between the said Isaac Clark and the said Isaac Augustus Crawford and the said Frank Crawford; which said commissioners reported their partition and division to the said probate court of the said county of Weber on the 4th day of March, 1881, and on said last-named day the said report of the said com-

missioners was duly confirmed by the said probate court; that in and by said partition and division there was set apart from the real estate first above described in findings No. 3 as the portion coming to the said Isaac Augustus Crawford under and by virtue of the provisions of the said will of the said Mary Clark the portion bounded and described as follows, to wit:

"A part of lot three (3), in block thirty-one (31), of plat 'A,' Ogden City survey, beginning at the southwest corner of said lot and running thence north twenty-one (21) feet, thence east two hundred and twenty-five (225) feet, thence north sixty-two (62) feet, thence east one hundred and five (105) feet, thence south eighty-three (83) feet, thence west three hundred and thirty (330) feet to the place of beginning, with the buildings and improvements thereon."

VII.

That at the time of the death of her husband, the said William Toland, the appellant and her said husband were residing on
108 the said land and premises, as set forth and described in findings No. 6, and that since the death of the said William Toland this appellant has continued to reside thereon and is now residing thereon; that the said Isaac Augustus Crawford, at the dates alleged in the complaint in this action, made, acknowledged, and delivered the several mortgages to one H. G. Doon and to the respondents herein, as mentioned and set forth in the said plaintiff's complaint, and that the said several mortgages were on the property described in said finding No. VI, and that all the said mortgages, except the one of date the 29th day of January, 1884, for the sum of $350.00, were executed, acknowledged, and delivered without the knowledge, consent, or acquiescence of the appellant; that the appellant received no part of the money attempted to be secured by any of the said mortgages; that appellant did not receive any part or portion of the consideration of any of the said mortgages, and that she did not know or suspect the existence of the said mortgages until long after they were given.

VIII.

That at the time of the execution and delivery of the said several mortgages to the said H. G. Doon and the respondents herein the appellant, Catherine R. Toland, was in the actual possession and occupancy of the said premises, as mentioned and set forth in finding No. VI, and every part thereof, claiming the same in fee under a good and sufficient warranty deed from her said former husband, William Toland, and that this actual possession and occupancy of the said premises by the appellant was well known to the said Doon and to Alfred H. Nelson, his agent, and to the said respondents
109 herein, and that the said Doon and respondents had actual notice of appellant's rights under her said husband's deed to the said premises; that the said Doon and respondents had such notice at the time of the execution of the respective mortgages, as mentioned and set forth in the complaint, by virtue of the actual

occupancy and possession of the said premises, and had no other notice.

IX.

That about two months prior to the 23rd day of January, 1886, the time of the execution of the so-called deed sought to be set aside and cancelled by this complaint, the said respondents had actual notice of the fact that the appellant had a deed to the said premises from her said husband, William Toland, and that said William Toland had long prior thereto obtained a good and sufficient warranty deed to said premises from the said Isaac Augustus Crawford, and that the appellant was claiming thereunder as the grantee of the said William Toland; that the said respondents had actual notice of all the rights of appellant in and to said premises about two months before they paid off the said Doon mortgages or before they paid any part or portion of said mortgages; that on the 4th day of August, 1885, the respondents cancelled their several mortgages of record at the time the said Isaac Augustus Crawford had made negotiations for a loan of some money, but which negotiations failed; but the appellant had no knowledge whatever thereof and no information whatever in regard thereto, and she had nothing whatever to do with the cancellation of the said respondents' various mortgages; that appellant never at any time promised to pay respondents their said mortgages.

X.

That on the 23rd day of January, 1886—the time of the execution of the alleged deed—the respondents herein paid off the various Doon mortgages, and at the time they so paid off the said mortgages they well knew that appellant's husband, William Toland, in his lifetime had purchased said premises from the said Isaac Augustus Crawford, and that he had procured a good and sufficient warranty deed therefor, and that the said William Toland had for a good and valuable consideration conveyed said premises to the appellant herein, Catherine R. Toland, and that she was then holding and claiming the said premises under and by virtue of said deed.

XI.

That on the said 23rd day of January, 1886, the said appellant, Catherine R. Toland, "made the said deed" which is sought by this complaint to be cancelled and set aside, "under the mistaken belief that her premises were subject to these several mortgages, and that she had no remedy but to pay them off or lose her land, life estate, and home, and be turned out of doors;" that it was by these means and the false and fraudulent representation of the respondents and their agent that the said respondents took advantage of the appellant's situation and surroundings and of this mistake and procured the said deed.

111 XII.

That said deed was executed, acknowledged, and delivered on the 23rd day of January, 1886, under the mistaken belief mentioned in finding XI, and that at the time of the execution of the deed the consideration therein expressed, to wit, $1,236.60, was less than one-half the value of the *said* premises at that time; that no part of the said $1,236.60 went to the appellant or for her benefit; that neither appellant nor her property was liable for these mortgage debts.

XIII.

That appellant "was a woman, not acquainted with the rules of business; was weak and nervous and troubled because of the situation. The respondents were business men, aided by legal counsel, anxious to get their debt paid, and the agent of Doon was a lawyer and pressing to get Doon's money. The respondents and Nelson many times visited appellant and urged her to settle and pay those mortgages, telling her in substance that her deeds were not worth the paper they were written upon; that her property was liable, and unless she paid them they would be foreclosed and she would lose her home, life estate, and all. Pressed in this manner and worried by her helpless condition, and misled by the representations of the respondents and those acting with them as to her liabilities, she yielded and made the deed;" that the pretended friend she had to advise her was either stupidly ignorant or was acting
112 in the interest of the other party; that he counseled with the respondents and advised her to do whatever the respondents wished; that said pretended friend at all times acted against the interests of appellant. The said recited consideration in said deed of $1,236.60 was not a fair or adequate consideration for the said premises; th-t the said bargain was harsh on appellant and unconscionable

(Signed) C. S. ZANE, *C. J.*
T. J. ANDERSON, *A. J.*
JOHN W. BLACKBURN, *A. J.*

In this cause it is further ordered that the motion of respondent to strike from the files the affidavits of value of matter in dispute, heretofore filed by appellants, be, and the same is hereby, denied.

Thereupon appellants, by their counsel, pray the allowance of an appeal from the judgment of this court, heretofore rendered herein, to the Supreme Court of the United States, and ask that the penal sum of a bond to be given thereon be now fixed. Whereupon it is ordered that said appeal be, and the same is hereby, allowed, and the penal sum of a bond to be given thereon is fixed at $500.

To the order denying motion to strike from the files the affidavits of value and the order allowing appeal and fixing bond respondent, by her counsel, duly excepts.

113 In the Supreme Court of the Territory of Utah.

CATHERINE TOLAND, Appellant,
vs.
GEORGE L. COREY, AMOS B. COREY, WARREN W. COREY, CHARLES J. COREY, and IRA B. SPAULDING, Respondents.

BLACKBURN, *J.:*

This action is brought by the appellant for the cancellation of a deed to the respondents to a part of a lot in Ogden City, Utah, on the ground of fraud and inadequacy of consideration.

It appears by the complaint and answer that the appellant owned a life estate in the premises and her son, Isaac A. Crawford, owned the remainder; that he conveyed his interest to William Toland, the husband of the appellant, and he conveyed the same to her; but that these deeds were not put upon record until the mortgages hereinafter mentioned were given and recorded, but they were made and delivered prior to the giving of these mortgages. It further appears that the said Crawford and appellant had given a mortgage on these premises to one Doon for $350, and after that, without the knowledge of the appellant and after she acquired the fee in
114 the premises, Crawford, without her knowledge or consent, gave two other mortgages on the premises to said Doon to secure separately $150 and $117.75, and after that Crawford, without appellant's knowledge, gave two other mortgages on the premises to the respondents to secure debts due them from him. All these mortgages were duly recorded and prior to the record of the deeds conveying the fee in the premises to the appellant.

On the 10th day of August, 1885, Doon brought suit to foreclose his three mortgages against the appellant and made the respondents parties, and before judgment appellant, to pay off these mortgages and for no additional consideration, made the deed this action seeks to have set aside. The whole amount called for by the mortgages was $1,236.60.

The allegation- of the complaint, which are denied by the answer, are to the effect that the mortgages given to Doon, except the one for $350, were given with notice of appellant's full ownership of the premises and Crawford had no interest whatever to encumber, and that the mortgages to respondents were taken with like notice; that the deed to respondents this action seeks to set aside was obtained by misrepresentation and other improper conduct by the respondents and others associated with them in the transaction; that appellant was poor, in bad health, and without friendly advice, and thus was forced to sign the deed against her will; that the consideration was grossly inadequate, and that the deed was not voluntarily acknowledged and not delivered on her authority or by her.

115 The first question is, Did Doon and the respondents have actual notice of the deed of Crawford to Toland and Toland to appellant at the time of making these mortgages by Crawford, these deeds being unrecorded? The appellant was in the possession of the premises, occupying them as a home, and this fact was

well known to respondent and the agent of Doon, and it is not pretended that Doon or the respondents had ever heard of the deeds by which appellant claimed title; but the contention of counsel is that appellant's exclusive and notorious possession of the premises was actual notice to Doon and the respondents of her title. Our statute requires actual notice, and constructive notice is not sufficient. The demands of the statute are answered: If a party dealing with the land has information of a fact or facts that would put a prudent man upon inquiry and which would, if possessed, lead to actual knowledge of the state of the title; and this is actual notice. 2 Pomeroy's Eq., sec. 597, '8, *et seq.*

The appellant was in the actual occupancy of the premises, and actual occupancy is enough to put parties dealing with the premises upon inquiry. 2 Pomeroy's Eq., sec. 616, note 3, and 617. But the contention of the respondents is that the possession of the appellant was consistent with the title shown by the record, and therefor- the mortgagees were under no obligation to look beyond the record and were authorized to consider her possession as under life estate only. On this question the authorities are both ways. Pomeroy's Eq., sec. 616, note 3, and 617. We think the better doctrine is
116 that an occupant's possession is actual notice of his title, and all persons with notice of such possession must at their peril take notice of his full title in the premises, no difference what the record shows.

Until the recording statutes were enacted possession was notice of ownership, and a conveyance made by a party out of possession was void. The purpose of these statutes was not to change the rule that possession was evidence of title and notice to all the world of ownership, but to afford the means of preserving the chain of title and give notice of the ownership of unoccupied lands. It would be an unwarranted application of the recording acts to say that they destroy the effect of occupancy as notice and evidence of ownership. We think, therefore, that a person at his peril deals with or purchases real estate of one in the possession of another, although said possession may be consistent with the record title. It is easy to find out the real situation by inquiry of the party in the possession, and it is his duty to do so. The conclusion therefor- is that none of these mortgages, except the one for $330, were liens upon the premises of appellant. It is also contended by respondents that appellant, well knowing these things, assumed these mortgages and paid them off and settled the foreclosure suit with her eyes open by making the conveyance she now seeks to have cancelled; that if she acted under a mistake of law and not of fact she is bound by it; that parties are bound to know the law, and a court of equity will not interfere to cancel a contract made under a mistake of law.
This is true as a general proposition; but it is only appli-
117 cable when the mistake is as to the general law, not to a case where a party is mistaken as to the effect of existing circumstances in relation to his prical rights. Pomeroy's Eq., sec. 841, '2, and 843 and notes. This case comes within the latter rule. The appellant made the deed under the mistaken belief that her prem-

ises were subject to these several mortgages, and that she had no remedy but to pay them off or lose her land, life estate, and home, and be turned out of doors, and by entering into this contract, and respondent-, taking advantage of this mistake, procured the deed; and this is the character of mistake that equity will relieve against.

Again, appellant was not at arm's-length with respondents. She was a woman not acquainted with the rules of business; was weak and nervous and trouble- because of the situation. The respondents were business men, aided by legal counsel, anxious to get their debts paid, and the agent of Doon was a lawyer and pressing to get Doon's money. The respondents and Nelson many times visited appellant and urged her to settle and pay these mortgages, telling her in substance that her deeds were not worth the paper they were written upon; that he- property was liable, and that unless she paid them they would be foreclosed and she would lose her home, life estate, and all. Pressed in this manner and worried by her helpless condition and misled by the representations of the respondents and those acting with them, she yielded and made the deed. It is true she had a friend or pretended friend to advise her, but he was stupidly ignorant or was in the interest of the other party, for he coun-
118 seled with them and advised her to do what they wished, and so clearly against her interest that he must have acted in consort with them.

When she signed the deed she did it under strong protest and she said, in making her acknowledgment, that she did not do it voluntarily and willingly; that she was forced to it. Four men were present for and in the interest of the respondents and her pretended friend acting also in their interest. She was alone, no one to utter a word in her behalf, her pretended friend acting against her. In this situation and influenced by the statement of all these men that to make the deed and cancel the debt was altogether the best thing she could do, and this in face of the fact, as the uncontradicted evidence shows, she was parting with the property at less than half of its value; also she labored under the impression that she could not sell the premises with these mortgages outstanding. Why did not this lawyer or these business men, or some one of them, tell her they would assist her in selling the property for its full vaiue and deduct out of the purchase-money the amount of the mortgages and give her the balance?

The only fair conclusion from the evidence is that these respondents and the lawyer aiding them misled this woman as to her legal rights and over-persuaded her to deed away her own property for less than half its value to pay debts that neither she nor her property were liable for. This may have been a sharp business transaction, but it was not to the honor of those who participated in it.

Every case in equity is determined on its own peculiar facts—on its own merits. Precedent and authority are only useful to
119 prompt the judicial conscience of the chancellor and aid him in arriving at an equitable decision. Therefor- we think this contract was inconceivable and ought to be set aside.

The $350.00 mortgage is a lien upon the land, and the decree ought

to be that the deed be cancelled; that the appellant pay this mortgage and interest by a day to be named by the court, and in default of payment the premises be sold on the time and terms property is sold on the foreclosure of mortgages by the provisions of the statute, and out of the proceeds this mortgage and interest be paid and the remainder be paid to appellant.

This cause is reversed and remanded with direction to the district court to have entered a decree in accordance with this opinion, and that the respondents pay the costs of this court and the costs of the court below up to date.

We concur.

(Signed) ZANE, *C. J.*
" ANDERSON, *A. J.*

Endorsed on back: Title of court & cause. Opinion. Filed June 2nd, 1890. Jos. P. Bache, clerk.

120 & 121 THE UNITED STATES OF AMERICA, *ss:*

To Catherine R. Toland, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at Washington on the second Monday of October next, to answer the appeal in that certain action wherein George L. Corey, Amos B. Corey, Charles J. Corey, and Warren W. Corey, Ira E. Spaulding are appellants and you are appellee, to show cause, if any there be, why the judgment of the supreme court of the Territory of Utah in that certain action in said court wherein you are plaintiff and appellant and the said George L. Corey, Amos B. Corey, Charles J. Corey, Warren W. Corey, and Ira E. Spaulding were defendants and respondents should not be reversed and corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand at Salt Lake City, Utah, this 31st day of July, A. D. 1890.

C. S. ZANE,
Chief Justice of the Supreme Court of Utah Territory.

Due service of the above citation is hereby acknowledged July 31st, 1890.

THO. MALONEY.

[Endorsed:] In the Supreme Court of the United States. Geo. L. Corey *et al. vs.* Catherine R. Toland. Citation on appeal. Filed Aug. 3, 1890. Jos. P. Bache, clerk supreme court Utah. J. N. Kimball, att'ys for appellants.

122 In the Supreme Court of the United States.

GEORGE L. COREY, AMOS B. COREY, CHARLES J. COREY, WARREN W. COREY, and IRA E. SPAULDING Appellants,
vs.
CATHERINE R. TOLAND Appellee.

Know all men by these presents that we, George L. Corey, Amos B. Corey, Charles J. Corey, and Warren W. Corey, and Ira E. Spaulding, L. B. Stephens, and John Keck, of Ogden City, in the county of Weber and Territory of Utah, are held and firmly bound unto Catherine R. Toland, of Ogden City, in the county of Weber and Territory of Utah, in the sum of five hundred dollars, lawful money of the United States, to be paid to said Catherine R. Toland, her executors administrators, or assigns; to which payment, well and truly to be made, we bond ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 31st day of July, 1890.

123 Whereas the above-named George L. Corey, Amos B. Corey, Charles J. Corey, Warren W. Corey, and Ira E. Spaulding have prosecuted an appeal to the Supreme Court of the United States to reverse the judgment rendered by the supreme court of the Territory of Utah in a certain action wherein said Catherine R. Toland was plaintiff and appellant and said George L. Corey, Amos B. Corey, Charles J. Corey, Warren W. Corey, and Ira E. Spaulding were defendants and respondents:

Now, therefore, the condition of this obligation is such that if the above-named George L. Corey, Amos B. Corey, Charles J. Corey, Warren W. Corey, Ira E. Spaulding shall prosecute their said appeal to effect and answer to all costs and damages if they shall fail to make good their plea and appeal, then this obligation shall be void; otherwise to remain in full force and virtue.

(Signed)

GEO. L. COREY.	[SEAL.]
AMOS B. COREY.	[SEAL.]
CHARLES J. COREY.	[SEAL.]
WARREN W. COREY.	[SEAL.]
IRA E. SPAULDING.	[SEAL.]
L. B. STEPHENS.	[SEAL.]
JOHN KECK.	[SEAL.]

Sealed and delivered in presence of—

(Signed) JAMES N. KIMBALL.

Approved as to form and sufficiency of sureties this 3rd day of August, A. D. 1890.

Endorsed on back: Title court & cause. Bond on appeal. Filed Aug. 3, 1890. Jos. P. Bache, clerk.

124 TERRITORY OF UTAH, } ss:
County of Weber, }

In the Supreme Court of said Territory.

CATHERINE R. TOLAND, Plaintiff and Appellant,
vs.
GEORGE L. COREY, AMOS B. COREY, WARREN W. COREY, CHARLES J. COREY, and IRA E. SPAULDING, Defendants and Respondents.

Warren W. Corey, being duly sworn, says:

That he is one of the defendants and respondents in the above-entitled action, and that he makes this affidavit on behalf of his co-respondents as well as on his own behalf; that this action was brought by the plaintiff and appellant to set aside a certain deed made, executed, and delivered on or about the 25th day of January, 1886, by the plaintiff and appellant to the defendants and respondents for the following-described premises, situated in Ogden City, Weber county, Utah Territory:

A part of lot three, in block thirty-one, in plat "A," Ogden City survey, viz:

Beginning at the southeast corner of said lot three and running thence north 21 feet, thence east 225 feet, thence north sixty-two
125 feet, thence east one hundred and five feet, thence south eighty-three feet, thence west three hundred and thirty feet to the place of beginning.

That said property is situated on Washington avenue, in said Ogden City, on the east side thereof, between 23rd and 24th streets; that affiant is well acquainted with the value of real estate in Ogden City, and that the said real estate is of the reasonable value of six thousand dollars; that the title to the said real estate and the said real estate are the only matters in dispute in this action.

And further affiant saith not.

(Signed) WARREN W. COREY.

Subscribed and sworn to before me this 12th day of June, 1890.

[SEAL.] (Signed) FRED. A. VOIGT,
Notary Public, Weber County, Utah.

Endorsed on back: Title court & cause. Affidavit of value. Filed July 11th, 1890. Jos. P. Bache, clerk.

126 In the Supreme Court of the Territory of Utah, June Term, 1890.

CATHERINE R. TOLAND, Respondent,
vs.
GEORGE L. COREY, AMOS B. COREY, WARREN W. COREY, CHARLES J. COREY, and IRA E. SPAULDING, Appellants.

Affidavit of John Keck as to Value.

TERRITORY OF UTAH, *County of Weber,* } ss:

John Keck, being duly sworn, deposes and says:

That he is a real-estate dealer in Ogden City, Utah; that he has been such dealer for about three years last past, and is now and during all of said three years has been well acquainted with the values of real estate in said city; that he knows the real estate the title to which is in controversy in this action and has known it for more than ten years; that said real estate is situated on the east side of Washington avenue, between 23rd and 24th streets, in said city, and near the business center of said city; that he is well acquainted with the value of said real estate; that said real estate is now and was at the time of the decision of the above-entitled cause of the reasonable market value of six thousand dollars cash, and could have been at the time of said decision and can
127 now be sold for said sum.

Affiant further says that he has no interest of any nature in said real estate nor in the result of this action.

(Signed) JOHN KECK.

Subscribed and sworn to before me July 10, 1890.

(Signed) E. M. ALLISON, JR.,
[SEAL.] *Notary Public.*

Endorsed on back: Title court & cause. Affidavit of John Keck as to value. Filed July 11th, 1890. Jos. P. Bache, clerk.

128 UNITED STATES OF AMERICA, *Territory of Utah,* } ss:

I, Joseph P. Bache, clerk of the supreme court of Utah Territory, in pursuance of an appeal allowed in the case of Catharine R. Toland, as appellant, against George L. Corey *et al.*, respondents, lately pending in said court, do return attached hereto a transcript of the record and proceedings, opinion, bond, and affidavits of value of matter in dispute, together with the original citation, all in and of said court and cause, to the Supreme Court of the United States, and I hereby certify that said attached transcript of said record and proceedings, opinion, bond, and affidavits is a full, true, and complete copy of the several originals thereof on file or of record in my office.

In testimony whereof I hereunto set my hand and affix the seal of said supreme court, at Salt Lake City, this 19th day of September, in the year of our Lord one thousand eight hundred and ninety.

Seal Supreme Court, Territory of Utah, United States of America.

JOSEPH P. BACHE,
Clerk of the Supreme Court of Utah.

129 In the Supreme Court of the United States, October —, 1890. Cause No. 1316.

GEORGE L. COREY, AMOS B. COREY, CHARLES J. COREY, WARREN W. COREY, and IRA E. SPAULDING, Appellants,
vs.
CATHERINE R. TOLAND, Appellee.

Assignment of Errors.

Come now the appellants and assign the following erro-s committed by the supreme court of Utah in the above cause:

1st. The supreme court of Utah erred in holding that appel-ants had actual notice of appellee's title in fee to the land in controversy in this cause by reason of her occupancy and possession thereof—

For the reason that such possession and occupancy was consistent with her record title.

2nd. The supreme court of Utah erred in holding that appellee's conveyance to appellants should be set aside by reason of the fact that she was ignorant of the law as applied to circumstances surround- her and as applied to her title.

3rd. The supreme court of Utah erred in finding as a con-
130 clusion of law that the facts and circumstances surrounding appellee at the time she made the conveyance complained of constituted fraud, for which the conveyance should be set aside.

4th. The supreme court of Utah erred in remanding the cause to the first district court for a decree without awarding a new trial, appellee being appellant in this court and having appealed from an order of the district court denying her motion for a new trial.

5th. The supreme court of Utah erred in holding that only three hundred and fifty dollars of the consideration paid by appellants to appellee for her conveyance should be repaid—

For the reason that the record shows that appellants paid the whole at her request.

6th. The supreme court of Utah erred in holding that if the sum of three hundred and fifty dollars was not repaid at a day fixed or to be fixed, that the property in controversy should be sold as property is sold under foreclosure proceedings, and that sum paid out of the proceeds—

Because the record shows that appellants paid the whole
131 consideration at the request of appellee, and if the considera-

tion was valid and binding as to one part it was as to the whole, and the deed to appellants a valid one.

M'ch 23rd, 1891.

JOHN PAUL JONES,
JAMES N. KIMBALL,
CHAS. W. BENNETT,
Of Counsel for Appellants.

[Endorsed:] No. 1316. In the Supreme Court of the United States. George L. Corey *et al. vs.* Catherine R. Toland. Assignment of errors. John Paul Jones, James N. Kimball, of counsel for app'lants.

132 [Endorsed:] Case No. 14,181. Supreme Court U. S. 1893, October term. No. 201. George L. Corey *et al.*, appellants, *v.* Catherine R. Toland. Assignment of errors. Office Supreme Court U. S. Filed Mar. 23, 1891. James H. McKenney, clerk.

Endorsed on cover: Case No. 14,181. Utah Territory sup. court. No. 201. George L. Corey, Amos B. Corey, Charles J. Corey, Warren W. Corey, and Ira E. Spaulding, appellants, *vs.* Catherine R. Toland. Filed September 27, 1890.

IN THE

Supreme Court of the United States.

October Term, 1893.—No. 201.

GEORGE L. COREY, AMOS B. COREY, CHARLES J. COREY, WARREN W. COREY, AND IRA E. SPAULDING, Appellants,

vs.

CATHERINE R. TOLAND, Appellee.

BRIEF ON BEHALF OF APPELLANTS.

By—

SAMUEL SHELLABARGER and
J. M. WILSON.

Press of McGILL & WALLACH, 1107 E Street N. W.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1893.

GEORGE L. COREY *et al.*, Appellants,
vs.
CATHERINE R. TOLAND, Appellee.
No. 201.

FACTS.

The facts in the case are specially found by the Supreme Court of the Territory of Utah (*Record, pp. 66, 70*). The facts were also found in the court below (*R., 14*).

The findings in the Supreme Court do not specifically find the time of the recording of the deeds from Isaac Augustus Crawford to William Toland and from William Toland to his wife, Catherine R. Toland, the appellee. The findings in the district court do find the dates of said recording, to wit, August 6, 1885, and January 25, 1886, respectively (*Record, p. 15*). These dates are subsequent, in point of time, to the execution and delivery of the mortgages hereinafter specifically named.

The Supreme Court of the Territory, although, as just remarked, not expressly finding the dates of said recording of said two deeds, yet does find, indirectly, the only material fact growing out of the date of said recording, to wit, the fact that H. G. Doon and appellants, at the dates of executing and delivering the several mortgages named in the complainant's petition (*Record, p. 3,*

folios 4 and 5), and also mentioned in finding 7 in the Supreme Court (*Record, p. 68*), had "*no other notice*" of the existence of said deed from her son, Isaac Augustus Crawford, to her husband, William Toland, of the 16th of March, 1880 (*Record, p 67, Finding 4*), and that of the 26th of November, 1880, from appellee's husband, William Toland, to appellee (*Record, p. 67, Finding 5*), than the alleged implied notice growing out of the then *possession*, of the premises in suit, by appellee; and which finding, as to "*no other notice*" (see *end of Finding 8, Record, pp. 68, 69*), could not be found, or be true, if, at the date of taking said mortgages, said Doon and appellants had the *additional* notice which grows, as a matter of law, out of the fact of said deeds to her husband, and of that to appellee, being *then* of record.

It will be seen by the opinion of the court (*Record, p. 71, folio 113*) that the court treated these last-named deeds as not being of record until *after* the giving of said mortgages. Thus the Supreme Court is shown to have found that, at the times named in complainant's complaint, of the making and delivery of said mortgages, respectively, to wit, January 29, 1884, by Isaac Augustus Crawford and Catherine R. Toland, to secure said H. G. Doon in the sum of $350; February 20, 1884, Isaac Augustus Crawford to H. G. Doon, to secure $150; June 6, 1884, Isaac Augustus Crawford to H. G. Doon, to secure $117.75; June 27, 1884, Isaac Augustus Crawford to the Corey brothers; and December 7, 1884, Isaac Augustus Crawford to the Corey brothers (*Record, p. 3, folios 5 and 6*), the said deeds, under which appellee claims, were not of record; and, further, that the averments of the complaint (*Record, p. 3*), in regard to the giving of, and the dates, etc., of said mortgages, are true (*Finding 7, Record, p. 68*).

We, therefore, here adopt, as our statement for this brief, the findings of fact as set forth in the Record at the pages above given.

Assignment of Errors.

The court below erred in the following particulars, as shown by the Record:

1. In holding that appellants' knowledge of the alleged possession, by appellee, of the premises in suit at the date of the execution of the mortgages named in finding 7 (*Record, p. 68*) constituted the "actual notice" to appellants of the state of appellee's title to the premises in question, which notice is provided for in, and contemplated by, the second, third, and fourth sections of the registration laws of Utah of February 20, 1874, and which sections are set forth below.

2. In failing to hold that the implied or constructive notice arising from mere knowledge of the alleged possession, by appellee, of the premises in suit at the date of taking said mortgages, respectively, did not constitute the "actual notice" contemplated by, and provided for, in said registration laws.

3. In failing to hold that the "actual notice" contemplated by said registration laws is such actual *knowledge* of the state of appellee's title as would render the taking of such mortgages, and setting them up against the alleged title of the appellee, an act of fraud and bad faith; and that such actual notice is not shown by the mere implication of the law arising from knowledge of the possession of the premises in suit, by the appellee, at the time of the giving of said mortgages.

4. The failing to hold that the possession of appellee at the date of the giving of said mortgages was, as to third persons having no actual knowledge of the existence of the deed from the appellee's husband to her, referable to her life interest in the premises in question, as

then shown by the recorded will of appellee's mother, and by the probate proceedings named in the Record (*R., p. 12, fol. 3, and R., p. 67, fol. 107*), and that it was not referable to any then unrecorded title in her or conveyance to her.

5. In holding that, under the facts found, the said mortgages were not valid; and, as affecting the title to the premises in suit, in failing to hold that such mortgages were prior and superior in right to the alleged title derived by the appellee under the said deed from her husband.

6. In holding that, under all the facts found in the case, the deed by the appellee to the appellants, of date the 23d of January, 1886 (*R., p. 69*), was wrongfully or fraudulently procured, and ought, as a matter of law and equity, to be cancelled and set aside by the decree of the court of equity.

7. In failing to hold that appellee was estopped and precluded, by the fact of her uniting, under all the conditions shown by the Record, with her son in making the mortgage of the 29th of January, 1884, securing $350, named in the seventh finding (*R., p. 68*), from asserting, in this case, that her possession of the premises in suit operated as notice to appellants of the alleged title of appellee in the premises in suit.

8. In failing to affirm the decree of the court below and in reversing said decree.

9. And for other errors appearing of Record.

BRIEF.

The appellee insists that the Record in this case shows this court to be without jurisdiction, because that the matter in dispute, exclusive of costs, does not exceed the sum of $5,000, as provided by the act approved March 3, 1885 (*23 Stats., 443*).

Regarding this point, we submit the following suggestions:

1. It will be seen by the Record that two affidavits (*R., pp. 76, 77*), to wit, that of Warren W. Corey and John Keck, were filed for the purpose of showing the value of the "matter in dispute," to wit, the tract described in the complaint as the property sued for, and also described in Finding No. VI (*Rec., p. 70*), each affidavit fixing the value of said tract at $6,000.

It will be seen by the Record (*R., p. 70*) that the appellee in the Supreme Court below, and before the court below allowed the appeal, moved to strike from the files these two affidavits, and that said motion was denied, and the appeal was, by the court, duly allowed after this contest as to the jurisdictional value (*R., p. 70*).

2. This is not a case of "money demand," where the amount fixed by the pleadings is usually adopted as determining the jurisdictional value (*Elgin* v. *Marshall*, 106 U. S., 580), and "where the claim must be stated and "determined" (*Ib.*, 580); but is a case "where the recov-"ery of specific property, real or personal, is sought, and "where affidavits of value were permitted from the be-"ginning, as a suitable mode of ascertaining the fact, "and bringing it upon the record (*Williamson* v. *Kincaid*, "4 Dall., 20; *Course* v. *Stead*, *id.*, 22; *United States* v. *Brig* "*Union*, 4 Cranch, 216)."

3. Hence, affidavits as to value, as to the present matter in dispute, are not only admissible on that specific and direct jurisdictional question, but because of the fact that the allowance of an appeal is not a matter *of right*, but must, under the judicial discretion of the court below, be *allowed* (*Pierce* v. *Cox*, 9 Wall., 787; *Barrel* v. *Transportation Co.*, 3 Wall., 424; *The Spark* v. *Lee Choi Chum*, 1 Sawyer, 715; *Tazaymon* v. *Twombly*, 5 Sawyer, 82), therefore, we submit that the allowance of the appeal in this case is a determination, by the court below, that the jurisdictional value existed. That the question of jurisdictional value does enter into the *allowance* of appeal, see *May* v. *Sloan*, 101 U. S., 232, *Phillips' Pract.* (5th ed.), 110.

In the case of *Zeigler* v. *Hopkins*, 117 U. S., 683, the court held that the finding of the court below as to jurisdictional value could not be overcome by counter affidavits filed in this court as to value.

If we are right, therefore, in supposing that the action of the court in overruling of the motion by the appellees in the court below to strike out the proof as to jurisdictional value, and in allowing the appeal is equivalent to finding the jurisdictional value to exist, then this settles the question, in the present case, in favor of jurisdiction—this because there is no showing made, since that finding below, which overcomes its effect.

4. By what appears in the preceding paragraph it is disclosed that a contest was made below as to jurisdictional value, and affidavits were filed establishing appellate jurisdiction. No counter affidavits or other proofs have been presented in this case to overcome the force of said affidavits as to value, and hence the appellees have acquiesced in that showing, and the jurisdictional value is, therefore, in effect, impliedly admitted.

In *Gage* v. *Pumpelly* (108 U. S., 165–5), the court held:

"When an appeal has been allowed after a contest as

to value of the matter in dispute, and there is evidence in the record which sustains our jurisdiction, *the appeal will not be dismissed simply because, upon examination of all the affidavits, we may be of the opinion that, possibly, the estimates acted upon below were too high.*"

See *Dodge* v. *Knowles*, 114 U. S., 437.

The matters just presented relating to the contest below as to jurisdictional value, the failure to exclude affidavits as to value; the allowance of the appeal by the court after such contest; the affirmative showing of jurisdictional value so remaining of record, and the failure to meet and overcome said showing of jurisdictional value, are not here pointed to as establishing that it is now beyond the *power* of this court to again pass on that question of value; but, on the contrary, these are here relied on to show that, as a "matter of procedure," there is (here using the language of this court, 114 U. S., 437) "a late day" at which this court will not hear new evidence as to value, nor allow the jurisdiction to be defeated where it has been shown *prima facie* to exist, and when the appellee has had ample opportunity to introduce, and has failed to introduce, the requisite countervailing proof as to such jurisdictional value. Presumably appellee has not met said proofs of value, because they could not be overcome.

Notice of State of Appellee's Title.

In finding No. 8 (*R., pp. 68–9*) the court below found as follows:

"That at the time of the execution and delivery of the said several mortgages to the said H. G. Doon and the respondent herein * * * Catherine R. Toland was in actual possession and occupancy of the said premises * * * and every part thereof, and claimed the same in fee under a good and sufficient warranty deed from

her said former husband, Willlam Toland, and that this actual possession and occupancy of the said premises by the said appellant was well known to the said Doon and to Alfred H. Nelson, his agent, and to the said respondents herein, and that the said Doon and respondents had actual notice of appellant's rights under her said husband's deed to the said premises; that the said Doon and the respondents had such notice at the time of the execution of the respective mortgages as mentioned and set forth in the complaint by virtue of the actual occupancy and possession of the said premises, AND HAD NO OTHER NOTICE."

The second section of the registration statute of Utah, of February 20, 1874 (*acts and resolutions of legislative assembly of Utah of 1874, pp. 27–8*), provides as follows:

"That every conveyance of real estate, and every ininstrument of writing setting forth an agreement to convey any real estate, or whereby any real estate may be affected, proved, acknowledged and certified in the manner prescribed by this act, *to operate as notice to third persons,* shall be recorded in the office of the recorder of the county in which such real estate is situated, but shall be valid and binding as between the parties thereto without such record, and to all other persons who have ACTUAL notice."

Section 3 of said statute is as follows:

"That every such conveyance or instrument of writing, acknowledged or proved, and certified and recorded, in the manner prescribed by this act, and every patent to lands within this Territory, duly acknowledged and verified according to law, and recorded as provided by this act, shall, *from the time of filing the same* with the recorder for record, *impart notice* to all persons of the contents thereof, and subsequent purchasers, mortgagees, and lien-holders shall be *deemed* to purchase and take with notice."

Section 4 of said statute is as follows:

"That every conveyance of real estate within this Territory hereafter made which *shall not be recorded as pro-*

vided in this act, shall be *void* as against any subsequent purchaser in *good faith* and for a valuable consideration of the same real estate, or any portion thereof, *where his own conveyance shall be first duly recorded.*"

Neslin v. *Wells*, 104 U. S., 432, brings into notice certain provisions of these statutes.

It will be seen that the court below treated this statute as applicable, for, in its opinion, the court says (*R., p. 72*):

"Our statute requires *actual* notice, and *constructive* notice is not sufficient."

We are thus brought to the question whether, since the only notice that appellants had of the character and existence of the alleged title of the appellee, was their knowledge of the possession held by the appellee at the date of said mortgages, this knowledge constituted, under said statute, "*actual notice.*"

It appears by the findings of fact in the Supreme Court (*Finding 6, R., p. 67*), that the appellee became entitled during her life to a life estate in the two-thirds interest assigned to her sons, Isaac Augustus and Frank Crawford, by the probate order of distribution; and by the findings in the district court (*Finding 7, R., p. 15*), that this life estate in said two-thirds was assigned and confirmed to her in the probate order of distribution. It is thus made to appear, by the Record, that she was entitled to be in possession of the premises in question, to wit, of that one-third interest which was purchased by her husband from her son, Isaac Augustus, and which was conveyed by her husband to her; and this she was entitled to wholly independently of her acquisition, through the deed from her son to her husband and from her husband to her.

We state our first and main proposition as follows:

The appellee, Catherine R. Toland, the daughter of

Mary Clark, derived, under the will of her said mother, which was probated January 24, 1879 (*Finding 3, R., p. 66*), a life estate in the property in question. Under this devise she was entitled to be in possession, and was in pos session, at and prior to the death of her husband, William Toland, which occurred on the 28th of January, 1881 (*Finding 1, R., p. 66; Finding 7, R., p. 68*). This title of Mrs. Toland was, therefore, a title of record, shown by the probate of her mother's will (*Finding 3, R., pp..66–7*). Her said title and right to be in possession was further evidenced, of record, by the fact that in the partition proceeding, this very land covered by the deed to her from her husband of the 26th of November, 1880 (*Finding 5, R., p. 67*), was set off to her in virtue of the title which she derived from the will of her mother.

Of this title, so derived under the will of her mother, and so set off to her by the probate proceeding, and which was of record in this duplicate manner, to wit, by the record of said will and by the record of said distribution order, the entire public, including, of course, the appellants, was fully notified; and hence, in the absence of further and other actual notice, were entitled to attribute said visible possession of the appellee to this title and right of possession derived under said will and under said probate proceeding.

It thus appears that when said mortgages to the appellants were taken there was no record of said deed from Isaac Augustus Crawford to William Toland (*Finding 4, R., 67; Finding 5, R., 15*), nor any record of said deed from William Toland to the appellee (*Finding 5, R., 67; Finding 6, R., 15*). There was at the date of said mortgages, as just stated, a full public record of the title derived by the appellee from and under her mother's will showing her to be, in virtue of such will, and of the probate order thereunder, entitled to the said possession.

It is indispensable, in order to a right conclusion touch-

ing the present point, in this connection to note and to impress upon the attention of the court the fact that the appellee, Catherine R. Toland, at the very initiation of this series of mortgages, dated, respectively, January 29, 1884, June 6, June 27, and December 7, 1884, and at a time when her son Isaac Augustus Crawford, according to her present contention, held no *more* interest in the premises in suit than he now holds, and when she held all of, and the *same*, interest in the land in controversy as she now asserts, that she, the appellee, *concealed* from said mortgagees the existence of said deeds, from her son to her husband, and from her husband to her (see words "*and had no other notice*" in *Finding 8, R., p. 69, fol. 109*), and held her son out to the mortgagees and to the public as being entitled, in virtue of *his* ownership, to unite with her in giving the said mortgage of January 29, 1884. This last-named mortgage for $350, in which she *united with her son* in giving, was, by her, made three years two months and three days *after* the time at which she says her son's interest in the land totally ceased to exist, and hers became full and perfect.

If, therefore, there was nothing else in this case going to neutralize and to effectually *do away with* the alleged notice to said mortgagees, the appellants, which is claimed to have resulted from the possession of Mrs. Toland, beyond the fact just stated that she, by uniting with her son in giving the $350 mortgage, declared to said mortgagees that her son was, in law and fact, owner of said land, and entitled to mortgage the same, yet this act and fact, of so holding out her son as owner, completely extinguishes any presumptions which otherwise might arise from her said possession, in the way of notice to said mortgagees, of the state of her title.

This is so, not only in virtue of the intrinsic force and reason arising from said transaction of her uniting with her son in giving said mortgage, but is so upon conclusive authority.

Thus, in *2 Leading Cases in Equity*, 153, it is laid down as follows:

"Hence a vendor who is warned of the existence of a prior conveyance, or of an outstanding right of any description, can hardly be bound to do *more* than *apply to the person in whom the right is said to be vested"* (in this case Mrs. Toland), "and will not be responsible for not pushing his inquiries further, unless the answer which he receives corroborates the prior statement or reveals the existence of other means of information."

Citing—

Holmes v. *Stoddard*, 2 Stockton's Chy., 419.

In the very nature and essence of the transaction Mrs. Toland was "applied to" when invited, by her son and the mortgagees, to take part in the transaction of giving a mortgage upon the land in suit, and in which transaction her son was to unite with her, he as owner, she as the life tenant, *to disclose* what title, as against the mortgagees, she claimed or might assert; and her act in so holding out her son as owner, by uniting with him, as such owner, in making said mortgage, was the most effectual sort of a reply that her son was such owner, and, as such, entitled to make said mortgage. Her mere silence under said conditions as to the state of her unrecorded title worked, against her, a conclusive estoppel.

Bank of U. S. v. *Lee*, 13 Pet., 118;

Morgan v. *Railroad Co.*, 96 U. S., 720, 721, and cases cited;

Baker v. *Humphrey*, 101 U. S., 494–498, *et seq.*, and cases cited.

This act of hers stood as a confession that the son owned the land, and it did away with all presumptions, prejudicial to the mortgagees, claimed to arise from her said possession; and so stood as an estoppel against her until she, in some way, repudiated the legal effect of her

so uniting in said mortgage; which she never did until after all the mortgages were given and her deed to appellants was made.

Under this state of facts we state our proposition of law, covering the entire question in this case, in the words of the concluding paragraph of section 616 of *2 Pomeroy's Equity Jurisprudence* (2d edition), as follows:

"The decisions may be regarded as *agreeing* upon the conclusion, which also seems to be in perfect harmony with sound principle, that where *a* title under which the occupant holds has been put on record, and his possession is consistent with what thus appears of record, it shall not be constructive notice of any *additional* or *different* title or interest, to a purchaser who has relied upon the record, and has had no actual notice beyond what is thereby disclosed."

And see, also, *Wilson* v. *Wall, 6 Wall, 90–91.*

Here two things will be observed. First, that whatever conflict may be found in the decisions (and which conflict is alluded to in the court below, R., p. 72), in regard to cases unaffected by the *policy of registration laws*, and not coming within the category embraced in the quotation just made from Pomeroy, yet as to the class of cases embraced within such quotation there is not any conflict of authority. This proposition Mr. Pomeroy supports by a multitude of authorities, amongst which are the following:

In the case of *Plumer* v. *Robertson* (6 Sergeant & Rawle, 184), Chief Justice Tilghman states the rule thus:

"Where a man is in possession without making his title known, a prudent person would not purchase without making inquiry, but where he who is in possession has placed upon the record a title consistent with that possession, it may well be taken for granted that he holds under the recorded title."

In the case of *Bell* v. *Twilight* (18 New Hampshire, 159), the head note is as follows:

"A grantor of land took from the grantee a lease of the same for the life of himself and wife, and remained in possession jointly with the grantee. The latter recorded his deed, and then mortgaged to one who had no notice of the lease, which was not recorded: *Held*, that the mortgagee was not charged with implied notice of the lease by possession of the lessee, the original owner."

In the case of *Hammond* v. *Paxton* (58 Mich., 393), the head note is as follows:

"The possession and use of land by a firm is not notice to purchasers that the land is partnership assets where the record title shows that the partners are tenants in common owning undivided half interests thereof. It is consistent with individual ownership as tenants in common, and will not even put purchasers upon inquiry."

In the case of *Great Falls Company* v. *Worster* (5 New Hampshire, 412–414) the syllabus states the present point in these words:

"Where one holds, and is in possession of, certain rights in a tract of land by a deed which is recorded and has certain other rights by a deed which is not recorded, his possession will not be notice of a title or claim beyond what he holds under the deed which is recorded."

In the case of *Staples* v. *Penton* (5 Hun., 172) what is decided as to the present point is thus stated in the syllabus:

"Possession to operate as notice should be inconsistent with the title. A, the owner in fee and in possession of property, conveyed it to B, taking back a lease for life and retaining possession of the property. B, before the lease was recorded, gave a mortgage on the property to C, who made reasonable inquiries of B as to liens, &c.: *Held*, that the possession of A was not such as to give notice to C of her rights in the premises."

In the case of *Smith* v. *Yule* (31 California, 180), decided in 1866, as to the present point, the syllabus reads:

"Notice of a prior unrecorded conveyance must be clearly brought home to a subsequent purchaser whose conveyance is first recorded before the unrecorded deed will prevail over the one first recorded.

"A person purchasing land in the possession of a person other than the grantor is charged by law with the duty of inquiring by what right or title he sells.

"If the apparent possession of land is consistent with the title appearing of record, it is not the duty of the purchaser to make any inquiry concerning the title beyond what the recording office shows."

In the case of *Cook* v. *Travis* (20 New York, 400) the syllabus as to the present point is as follows:

"A judgment debtor continuing in possession of land which has been sold under execution against him may be presumed to hold under the title of the purchaser.

"Where the debtor thus remained for many years claiming to hold as tenant for life of the purchaser under a senior judgment the deed to him was not recorded: *Held*, that his possession was not constructive notice to a subsequent mortgage under the junior judgment of his asserted title or that of his alleged landlord."

These cases thus presented are sufficient to serve as examples of the uniform holding of the courts as stated in the above-quoted paragraph from 2 Pomeroy. A multitude of cases, in addition to those just presented, will be found cited in Note 2 at page 854 of 2 Pomeroy.

In *1 Beach on Modern Equity Jurisprudence* (2d edition, section 362), is found the following, which goes to the same general effect as that just quoted from Pomeroy:

"The proof of notice of the existence of a prior unrecorded deed must be made in the same manner, and its measure must be the same as that which establishes a fact in other civil cases. As the ground upon which the holder of the unrecorded conveyance is permitted to prevail over a subsequent purchaser who has recorded his conveyance according to the statute is, that it *was fraudulent* in him to take and register a conveyance to

the prejudice of the *known* title of another, the notice—whether actual or constructive—*can not be presumed, but, like other matters of fraud, must be clearly shown. The proof of notice must be clear and positive so as to leave no reasonable doubt that the taking of the second conveyance was, under the circumstances, an act of bad faith towards the first purchaser. Actual* knowledge must be shown by proof, or at least such circumstances must be proved as would have been sufficient to put the party upon inquiry. In order that possession may have the effect of giving notice of an unrecorded deed and supply the place of registration, it must be open, manifest, and unequivocal, and be under the recorded conveyance *and not under or referable to some other condition or transaction.* Its characteristics must be such as to indicate a right which would be in keeping with the import of the unrecorded conveyance, and not such as to lead to the inference of a right based or dependent on something different."

To the same effect is the following from section 398 of Story's Equity Jurisprudence:

"It has indeed been *greatly doubted* whether courts ought ever to have suffered the question of notice to be agitated as against a party who has duly registered his conveyance, but they have said that fraud shall not be permitted to prevail. There is, however, this qualification upon the doctrine, that it shall be available only in cases where the notice is so clearly proved as to make it fraudulent in the purchaser to take and register a conveyance in prejudice of the known title of the other party."

To the same effect is the following from the opinion of Allen, J., in the case of *Brown* v. *Volkening* (64 New York, 76, 83), where, speaking of the kind of possession that will defeat a *bona fide* purchaser, the court says:

"The possession and occupation must be actual, open, and visible; it must not be equivocal, occasional, or for a special or temporary purpose, *nor must it be consistent with the title of the apparent owner by the record.*"

In the case of *Pope* v. *Allen* (90 New York, 303), the case of *Brown* v. *Volkening* is reaffirmed, and the foregoing language of the court in that case is repeated in the opinion; and see also the case of *Page* v. *Waring* (76 New York, 465), where this case of *Brown* v. *Volkening* is reaffirmed.

In *Wyatt* v. *Barwell* (17 Vesey, 435), the syllabus states what was decided in these words:

"To affect a registered deed by notice of prior unregistered deed, the policy of which has been much doubted, *actual notice must be clearly proved, amounting to fraud.*"

In the case of *Rogers* v. *Wiley* (14 Illinois, 65), the syllabus states what was decided as follows:

"To take the case out of the registry acts, so as to defeat the title of a subsequent purchaser who first places his deed upon record on the ground that he had actual notice of a prior unrecorded deed of the same premises, the proof of such notice must be clear and positive so as to leave *no reasonable doubt that the taking of the second was an act of bad faith towards the first purchaser.*"

This statement from the syllabus is a quotation from the opinion of the court as found at page 66.

The Revised Statutes of Massachusetts, chapter 59, section 28, page 407, provide that no unrecorded conveyance "shall be valid and effectual against any person "other than the grantor and his heirs and devisees, and "persons having *actual* notice thereof." Under this, or precisely equivalent provisions of the registry laws of Massachusetts, the decisions noted below have been made.

As to what is meant by *actual* notice, in this and other equivalent statutes, Story's Equity Jurisprudence, section 399, says:

"*Actual notice* requires no definition, for in that case knowledge of the fact is brought *directly* home to the

party. Constructive notice is in its nature no more than evidence of notice, the presumption of which is so violent that the court will not even allow of its being controverted."

In the case of *Pomeroy* v. *Stevens*, 11 Metcalf, 244, the question of notice, resulting from possession, arose under the statute above quoted, ch. 59, sec. 28, and, in the body of the opinion (247–8), in deciding that possession gave no "actual notice" under that statute, the court states as follows:

"*Before* the Revised Statutes, ch. 59, sec. 28, the open and notorious possession and improvement of real estate, by a party entering under a deed not registered, was, in general, sufficient evidence from which notice of such deed might be inferred or implied, so as to avoid a subsequent deed or attachment. But to have that effect, the evidence must have been such as to render the inference not merely probable, but necessary and unquestionable. *M'Mechan* v. *Griffing*, 3 Pick., 149. But *since* the Revised Statutes, ch. 59, sec. 28, no implied or constructive notice of an unregistered deed can avoid a subsequent deed or attachment. The statute expressly provides that no conveyance of real estate shall be valid and effectual, against any person other than the grantor and his heirs and devisees, and persons having actual notice thereof, unless it is made by a deed recorded as the statute directs. *Since* this provision, no implied or constructive notice of an unregistered deed will give it validity against a subsequent purchaser or attaching creditor. *It is not sufficient to prove facts that would reasonably put him on inquiry.* He is not bound to inquire; but the party relying on an unregistered deed, against a subsequent purchaser or attaching creditor, must prove that the latter had *actual* notice or knowledge of such deed. The evidence offered was clearly insufficient to prove any such notice or knowledge."

This case is reaffirmed in *Lamb* v. *Pierce* (113 Mass., 72), where the court uses the following language:

"We think this statute requires that the plaintiff must

be shown to have had *actual* notice that there had been a conveyance to the defendant of the estate purchased by him at the auction sale. The provision we are now considering was first enacted in the Revised Statutes, ch. 59, sec. 28. Since then it has been *uniformly* held that no implied or constructive notice of an unrecorded deed would give it validity against a subsequent purchaser. *Therefore, proof of open and notorious occupation and improvement, or of other facts which would reasonably put a purchaser upon inquiry, are not sufficient, but the party who claims under an unrecorded deed must prove that the subsequent purchaser had actual knowledge of notice of such deed. Pomeroy* v. *Stevens*, 11 Met., 241; *Parker* v. *Osgood*, 3 Allen, 487; *Dooley* v. *Wolcott*, 4 *id.*, 406; *Sibley* v. *Leffingwell*, 8 Allen, 584."

The case is again reaffirmed in *Clark* v. *Watson* (141 Mass., 251).

This doctrine of *Pomeroy* v. *Stevens* (*supra*) is reffirmed in *Mara* v. *Pierce* (9 Gray, 307).

The case of *Dooley* v. *Wolcott* (4 Allen, 406–9–10) reaffirms *Pomeroy* v. *Stevens* (*supra*), and *Mara* v. *Pierce* (*supra*), and, also, *Parker* v. *Osgood* (3 Allen, 489).

The same doctrine is asserted in *Glass* v. *Halburt* (102 Mass., 24–34); also in *Clark* v. *Bosworth* (51 Maine, 528).

From the cases now gone over we restate (in some aspects restate more fully) the propositions of law upon which we rely in asserting the *bona fides* of the appellants.

1. The policies which lie at the foundation of registration laws have had the effect of *modifying* the general principles applied by the courts, in the absence of registration laws, as to the effect of actual visible possession in the way of affecting a purchaser with notice of the title of the possessor. Under the policy of such registration laws notice of an unrecorded title, as against a purchaser whose title was first recorded, will not be attributed to the subsequent purchaser unless " the proof of notice is " clear and positive, soas to leave *no reasonable doubt* that

"the taking of the second conveyance was, under the "circumstances, an act of *bad faith* toward the first pur- "chaser."

See *Story's Equity Jurisprudence* (10 ed.), sec. 398 and cases and authorities cited in note 5, p. 388;
Rogers v. *Wylie*, 14 Ill., 65;
Insurance Co. v. *United States*, 10 Maryland, 517;
Wyatt v. *Barwell*, 19 Vesey, 435;
Dey v. *Dunham*, 2 Johnson's Chy., 182;
1 Beach's Equity Jurisprudence, sec. 362;
Wilson v. *Wall*, 6 Wall., 91;
Williams v. *Jackson*, 107 U. S., 484.

Or stating this doctrine relating to the modifying effect of registration laws, requiring, for example, "actual notice," as in the case at bar, in the language of two of the most eminent American authorities, and authorities recently commended by this court (see *Simonds' Coal Co.* v. *Doran*, 142 U. S., 438), upon the rules applicable, in equity, to the doctrine of notice as effected by possession, we find it stated in *2 Leading Cases in Equity* (*Hare & Wallace's Notes*), at page 187, in these words:

"The reasoning on which the doctrine of notice was originally applied to the registry acts in England, and on which it has been upheld and extended here, would seem to show that it is *only* applicable where the notice of the prior conveyance *is equivalent to actual knowledge, and not where it is merely a matter of legal or equitable construction.* For, as the courts of both countries proceed on the ground that these acts apply for the protection of parties who have acted in good faith, it follows that to exclude their operation by proof of notice *it should be such as to show a conscious departure from the rules of fair and equitable dealing. Constructive notice, therefore, although absolutely conclusive in cases not within the registry acts, would be insufficient, where they are applicable, unless it is of such a nature as to justify an inference of actual knowledge or notice which must necessarily be shown in order to make out a want of good faith on the part of the purchaser.* 'Apparent

fraud or clear and undoubted notice is a proper ground for relief,' said Lord Hardwicke in *Hine* v. *Dodd* (2 Atk., 275), ' but suspicion of notice, though a strong suspicion, is not sufficient to justify this court in breaking in upon an act of Parliament.' The opinion thus expressed has been not only sustained, but extended by the subsequent course of English equity in *Jelland* v. *Strainbridge* (3 Ves., 478), actual knowledge of the prior deed and intent to defraud the parties claiming under it were held necessary to avoid the priority acquired by the prior registration of the second deed."

The authority then proceeds to cite *Wyatt* v. *Barwell*, 19 Ves., 435; *City Council* v. *Page*, 1 Spear's Equity, 139, 212, and other cases.

At page 188 (*2 Leading Cases in Equity*) after stating the condition of the English law, as we have just quoted it, these learned editors add, regarding the American law, the following:

"And, so far as this doctrine is sound in principle, it ought to prevail in this country, for there seems to be nothing in our legislation to render it less applicable here than in England."

The authors then, on pages 188 and 189, allude to certain statutes giving priority to a registered as against an elder unregistered conveyance in the absence of "actual notice" of the elder conveyance, and, amongst others, cite the statute of Massachusetts which we have above given, and which, in the respect in question, is identical with the statute of Utah.

In the second column, at the top of page 188, the authors state the present condition of the American law under such registry laws as those just alluded to, in the following words:

"There must be actual notice, or knowledge, of a prior unrecorded conveyance, to avoid a second which has been duly recorded."

And in enforcing this statement of the condition of the American decisions, and equivalent statements thereof, the authors cite the following cases:

Martin v. *Sale*, 1 Bailey's Equity, 4;
Insurance Co. v. *Ross*, 2 Maryland Chy. Dec., 25;
Insurance Co. v. *Shriver*, 2 Maryland Chy. Dec., 381;
Frothingham v. *Stacker*, 11 Missouri, 77;
Harris v. *Arnold*, 1 Rhode Island, 125;
Flagg v. *Mann*, 2 Sumner, 567;
Bush v. *Golden*, 17 Connecticut, 594;
Cunningham v. *Buckingham*, 17 Ohio, 264;
Hobson v. *Stout*, 2 Stockton's Chy., 419;
Insurance Co. v. *Ross*, 12 Maryland Chy., 38;
Norcross v. *Widgery*, 2 Massachusetts, 509;
McMechan v. *Griffing*, 3 Pickering, 148;
Lawrence v. *Stratton*, 6 Cushing, 168;
Curtis v. *Murphy*, 3 Metcalf, 405;
Hennesy v. *Andrews*, 6 Cushing, 170;
Pomeroy v. *Stevens*, 11 Metcalf, 244;
Hoffing v. *Burnham*, 2 Iowa, 39;
Beattie v. *Butler*, 21 Missouri, 313;
Butler v. *Stevens*, 36 Maine, 484;
Spofford v. *Weston*, 29 Maine, 140; and many other cases.

2. In order that such possession under an unrecorded title shall prevail, in the way of giving notice, against a subsequent recorded title, the possession must not only be open, manifest, and unequivocal, and must not be under the recorded conveyance of the person in possession, but must also not be under, or referable to, some *other* condition, title, or transaction. Its characteristics must be such as to indicate a right which would be in keeping with the import of the unrecorded conveyance, and not such as to lead to the inference of a right based or dependent upon *something different.*

See—

Atwood v. *Bears*, 47 Michigan, 72;
Page v. *Waring*, 76 New York, 465, 470;
1 Beach's Equity Jurisprudence, sec. 362;
Wilson v. *Wall*, 6 Wall., 91;
Williams v. *Jackson*, 107 U. S., 484.

3. If the apparent possession of land is consistent with the title appearing upon the record, it is not the duty of the purchaser to make any inquiry concerning the title beyond what the recording office shows.

See *Smith* v. *Yule*, 31 California, 180.

Results of Foregoing Propositions of Law.

We submit that we are right in the propositions now gone over, asserting as follows:

(*a*) That the possession of the appellee does not result in giving appellants notice of the alleged title of appellee under the deeds from her son to her husband and from her husband to her.

(*b*) That appellants had no "actual notice" of her said alleged title under said last-named deeds at the time they took said mortgages and placed them on record.

(*c*) That, at the time when, as alleged in the complaint, and found in the findings of fact, the appellants represented to her that her unrecorded deeds were not good as against said recorded mortgages, such statement was in fact and law true; and,

(*d*) That the appellee, at, before and after, the giving of such mortgages, suppressed, and kept from appellants, all knowledge of the existence of her said deed from her husband, by means of neither recording her said deed nor actually informing appellants of the existence thereof, so that it was true, as stated at the end of finding 8 (R.,

p. 69), that appellants had no notice of appellee's alleged title at the time of taking said mortgages, except such as arose, as a matter of law, from knowledge of her possession of the premises in question, and she also affirmatively led appellants to believe that her son had a good title at the time he executed the mortgages—this by herself uniting with her son in making said mortgage, securing $350.00, at a time when the state of her own and her son's title was the same as it was when she executed the deed which this action seeks to cancel.

If we are right in these positions, then the finding of fraud and wrongdoing on the part of appellants, as set forth in findings 8 to 13, inclusive, could not be reached without error in the court in making such findings.

In other words, the findings of fraud and wrongdoing, as set forth in said findings, which are based, either in whole or in part, upon the conclusion, by the court, that the possession of the appellee of the premises in suit affected the appellants with "*actual notice*" of the title now set up by the appellee, could not have been reached except on the erroneous assumption that the mortgages were invalid, and which they were *not* if said appellants were not so affected with said alleged "actual notice" of the state of appellee's title.

To illustrate and enforce what we here mean, take as an example the following: If said possession did not affect appellants with notice of the alleged title of appellee, then the "*mistaken belief*" spoken of in finding 11 (R., p. 69) was not a mistaken belief at all; and the mortgages were valid as against her unrecorded deeds; and in such case all representations of appellants spoken of in said findings, based upon, or asserting, the validity of said mortgages, were not fraudulent but were true.

In still other words, we may state our present point thus: That the elements of the case, which the Record shows were relied on, either in whole or in part, in

reaching the conclusion that appellants were guilty of the fraud and wrongdoing set forth in said findings, are not elements *severable* from the other grounds upon which, either in whole or in part, the court was led to its said conclusions finding said fraud and wrongdoing. It is impossible, therefore, as a matter of law, for this court to reach the conclusion that the court below could or would have found either or any of the said alleged frauds and wrongdoings had the court regarded and treated said mortgages as valid, and as creating a title superior to the title set up by the appellee under the said deed from her husband.

Hence we insist that should the court reach the conclusion that said mortgages were valid and conferred a title superior to the unrecorded title claimed in virtue of the said deed from the appellee's husband, then the court must reverse the judgment in the present case.

SAMUEL SHELLABARGER,
J. M. WILSON,
Solicitors for Appellants.

Office Supreme Court U.S.
FILED.
MAR 6 1891
JAMES H. McKENNEY,
CLERK.

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IN THE

Supreme Court

OF THE UNITED STATES.

OCTOBER TERM, 1890.

GEORGE L. COREY, ET AL., *Appellants,*
vs.
CATHERINE R. TOLAND, *Appellee.*
} *NO. 1316.*

The appelee Catherine R. Toland by her attorney Orrin B. Hallam now comes and files acceptance of notice of motion signed by counsel for appellants and moves the court to dismiss the appeal herein because

1 The court has no jurisdiction of the appeal.

2 The appellants have filed no assignment of errors;

And the appelee unites with said motion a motion to affirm, on the ground that although the records show that this court has jurisdiction the question on which the jurisdiction depends is so frivolous as not to need further argument.

ORRIN B. HALLAM,
Attorney for Appellee.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

GEORGE L. COREY, et al., *Appellants*
vs.
CATHERINE R. TOLAND, *Appellee.*
} *No.* 1316.

The appellants and their attorney, C. W. Bennett, are hereby notified, that the appellee will on Monday, March 2nd. 1891, or if the court is not in session that day, then on the first Monday thereafter that the court is in session, move the court to dismiss the appeal herein because,

1st. The court has no jurisdiction of the appeal.

2nd. The appellants have filed no assignment of errors; and will unite with said motion a motion to affirm on the ground that although the records show that this court has jurisdiction, the question on which the jurisdiction depends is so frivolous as not to need further argument.

3rd. The grounds for said motions being more fully set forth in the brief of appellee's counsel hereto appended.

O. B. HALLAM, Attorney for Appellee.

Washington, D. C. January 17th. 1891.

Received a copy of the above and foregoing notice and also a copy of the brief of the appellee appended thereto.

Salt Lake City, Utah Territory, January 21st. 1891.

C. W. BENNETT,
Attorney for Appellants.

OCTOBER TERM, 1890,

GEORGE L. COREY, et al., *Appellants*,
vs.
CATHERINE R. TOLAND, *Appellee*.

Motion to dismiss and affirm.

IN THE

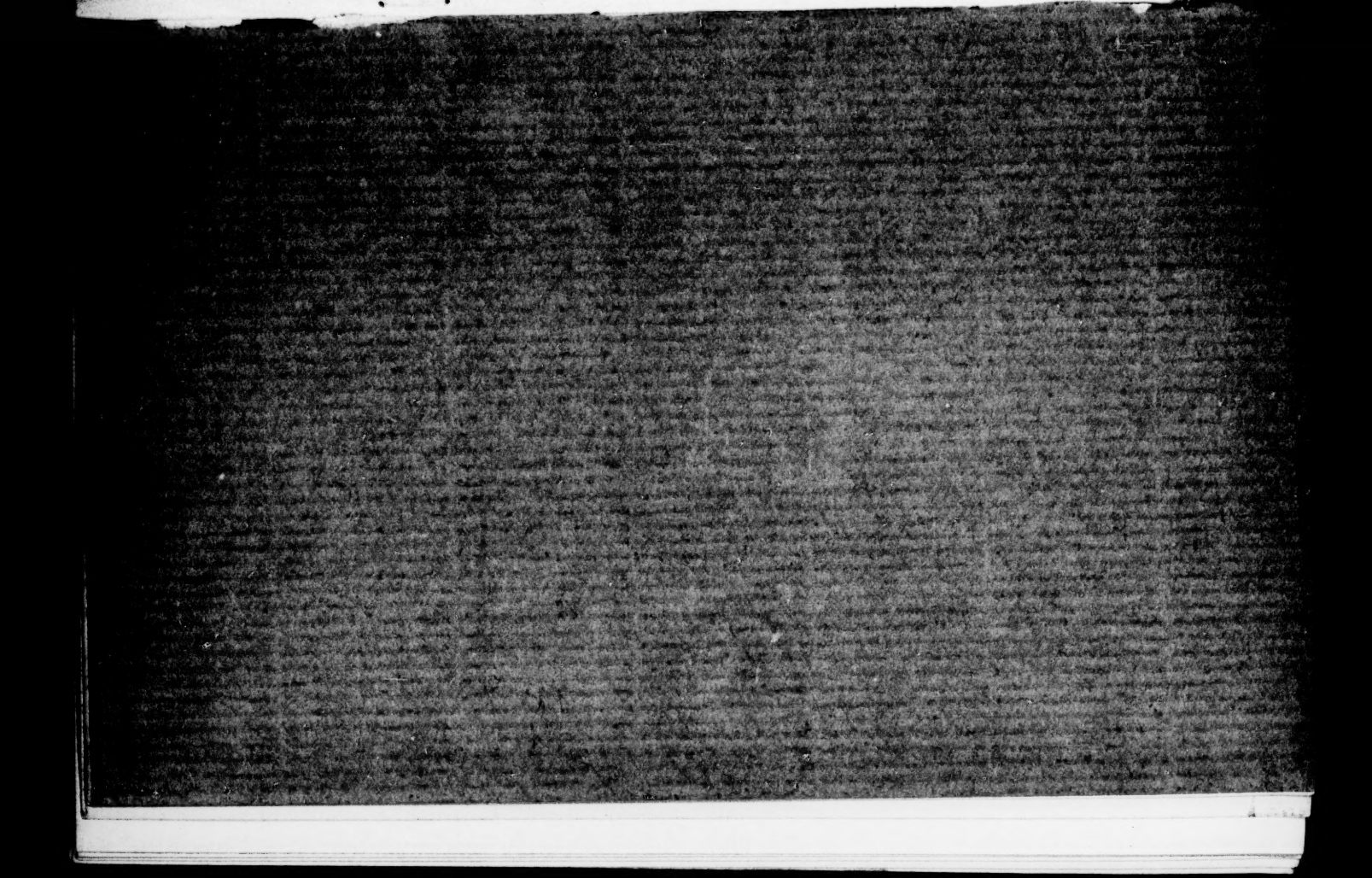
Supreme Court of the [illegible]

October Term, 1895.

GEORGE L. CORBY *et al.*,
Appellants,
vs. No. 201.
CATHERINE R. TOLAND,
Appellee.

Appeal in Equity from the Supreme Court of the Territory of Utah.

O. H. HALLAM,
Solicitor for Appellee.



IN THE

Supreme Court of the United States.

October Term, 1893.

GEORGE L. COREY *et al.*, *Appellants*,
vs.
CATHERINE R. TOLAND, *Appellee.*
No. 201.

BRIEF FOR APPELLEE.

STATEMENT OF CASE.

The case was stated to some extent in the brief filed by appellee, on the motion to dismiss or affirm, in March, 1891. This motion was denied for the time being, because the record was not then printed, but privilege given to renew it upon the printed record, and is accordingly now renewed. Enlarging somewhat the statement of the case contained in appellee's former brief, as well as in the "Facts" as stated in the appellants' brief, attention of the court is called to the alleged consideration for appellee's deed to appellants, as stated in their answer (Record p. 12).

Three mortgages to Doon, -	$863.90
Two mortgages to appellants, -	388.83
One unsecured debt to appellants,	10.87
Total, -	$1,263.60

The consideration in the deed is stated at $1,236.60,

two digits being somehow reversed—probably a clerical error. It is not claimed by appellants that appellee was personally liable on any of these debts, except one of the mortgages to Doon, in which she had joined; originally for $350, but which had run for two years at the Utah rate of 1¼ per cent a month, making $105, and swelling the debt to $455. The remaining $808.60 appellee got no personal benefit from, whatever.

The answer admits (Record p. 8) that appellants had cancelled *their* two mortgages, several months before they procured the deed, so that *these* did not in any view constitute a lien at that time. True the appellant says, by way of explanation of this cancellation, that the appellee promised them, if they would do so she would pay the debts, but aside from the evident application of the statute of frauds, the court below found as a matter of fact that this was not true, that "she had nothing whatever to do with the cancellation of the said respondents' various mortgages; that she never at any time promised to pay respondents their said mortgages." (See concluding paragraphs of the 9th finding of facts, Record p. 69.)

Having been decreed the $350 mortgage, the only monetary claim in dispute is that arising out of the two remaining Doon mortgages, $408.90, which is too frivolous to sustain the present appeal, unless appellants show affirmatively that the value of the real estate is over $5,000.

Motion to Dismiss or Affirm.

As stated in appellee's former brief, now asked to be considered in connection with this one, the highest valuation in either the pleadings or testimony is $3,675. The court below having found as matter of fact that the deed was procured by the fraudulent

representation and mistaken belief, not only that the land was subject to these several mortgages, but *"that she had no remedy but to pay them off or lose land, life estate and home and be turned out of doors;"* (a clear *non sequitur* as to a life tenant, from mortgages executed by a remainderman,) not only that her deeds were not worth the paper they were written upon, but also *"that her property was liable and unless she paid the mortgages, they would be foreclosed and she would lose her home, life estate and all;"* (See 11th and 13th findings of fact, Record pp. 69, 70.) it seems clear that even if appellants do show by competent and sufficient affidavits that the real estate is worth over $5,000, these findings of fact being conclusive on this court, it will not entertain a nominal appeal which it is powerless to consider, and so use it as to grant $400 worth of relief, should it find the appellants as matter of law entitled to that much additional lien on the land.

But are the affidavits filed by appellants with the court below either competent or sufficient to establish a matter in dispute of over $5,000, even though the land is to be considered in dispute? As to competency the authorities are fully presented in the former brief.

It is desired now only to call attention to the following additional ones.

In the Red River Cattle Company vs. Needham, 137 U. S. Rep., 632, it is said, "The result of the cases may be fairly stated to be: Where demand is not for money but the nature of the action requires the value of the thing demanded to be stated in the pleadings, affidavits will not be received here to vary the value as appearing on the face of the record; nor will the filing of such affidavits be ordinarily permitted where evidence of value has been adduced below on both sides, and the proofs have been transmitted

either with or without the announcement of a definitive conclusion based thereon."

In Talkington vs. Dumbleton, 123 U. S., 745, it was held that when the value of the property in dispute was necessarily involved in the determination of the case in the court below, this court would not, on a motion to dismiss for want of jurisdiction, consider affidavits tending to contradict the finding of that court in that respect.

It is contended by counsel for appellants that the action of the court below in receiving said affidavits and denying the motion to strike them from the files is conclusive. This contention can hardly be sustained in view of the fact that it is noted in the record (p. 70) that appellee duly excepted to the order denying the motion. If the affidavits were not competent because of their being contradictory of the record this court has power to review them on this exception—no cross appeal is necessary.

As to their sufficiency, admitting them to be competent; without doubt this court can look *to* them to see whether they establish the vital point that the appellants, if they are given all the relief they claim, had, at the date of the decree below, an interest of $5,000 at stake.

There are but two affidavits, one by Warren W. Corey, one of the appellants, and the other by John Keck, who, while he states he has no interest in the controversy, appears three weeks later as surety on their appeal bond. Their relations to the appeal are not mentioned as destroying their competency as witnesses, but merely to show that close scrunity is to be given to their language, and that it is fairly to be presumed that they chose that language deliberately, and that it is to be construed most strongly against the

parties offering.

It will be noted that the appellee conceded, and the court in its decree reserved, to appellants a lien for the $350 with the 1¼ per cent interest per month from January 29, 1884. This to the date of the decree, June 2, 1890, amounted to 95 per cent, nearly doubling the original debt, leaving in round numbers $5,300 "in dispute," if the value of the land is to be fixed, as they ask it, at $6,000. Rather a narrow margin for a jurisdiction—"but 'tis enough," if no other element enter. But besides this it is admitted by appellants in their answer (Record, *pp.* 9, 11, 12), that they agreed and gave bond to remove from the land the buildings and place them on another lot, hence all the appellants could get, in case of a reversal *in toto*, would be the naked land without the buildings; and, as the decree of the *District* Court, which they ask affirmed, requires, they must at their own expense do this work of removal.

Now unless these affidavits show clearly that the naked land is what the affiants speak of in making the valuation, the appellants fail in their showing that there is a $5,000 matter in dispute, and have no standing in this court. It is a well settled principle that the words "real estate," unqualified, or the word "premises," must be construed as including all the buildings thereon. The affiant Corey, in his affidavit, describes the property primarily as the following described "premises;" secondarily as "a part of lot 3, in block 31," going on to give the metes and bounds; and adds that "the said real estate is of the reasonable value of six thousand dollars," wholly failing to eliminate the buildings from this valuation. The affiant Keck uses the words "real estate" exclusively, and says that "said real estate is now and was at the time of the decision of the above entitled cause of the reasonable

market value of $6,000." True he speaks of it as "the real estate the title to which is in controversy in this action," but being, as he states, one who has no interest in the action, he would not be presumed to know what was in controversy, whether the land alone or the land and buildings.

The words used fairly import in both affidavits that the affiants speak of the land and improvements; at best for the appellants they are ambiguous, and must be construed most strongly against the party offering them. Hence the appellants cannot be held to have shown the value of the naked land to be $5,000, in the absence of any showing of the value of the buildings.

But granting the value of the land alone shown to be $6,000, reduced to $5,300 by the mortgage provided for, there is a total failure to show that the expense of transplanting the building would not have exceeded $300, and the appellants are still short on proof.

In other words, conceding the land to be worth $6,000, if the appellants get it back they loose $700 money that they will now get, and are put to the expense of moving the buildings—an unknown quantity—and hence it is not clear that they have as much as $5,000 interest in this appeal.

So shadowy a showing is not sufficient to establish your jurisdiction.

As to Notice of Appellee's Title.

Mrs. Toland was the owner in fee of the property at the date of all the mortgages. By the will of her mother, Mary Clark, recorded in 1879, she became the owner of a life estate, the remainder being devised to Isaac Augustus Crawford, Mrs. Toland's son by a former husband. In 1880 her husband, Toland, purchased by deed this remainder interest from Clark, and during

the same year conveyed it to his wife. The two estates became merged and Mrs. Toland became the owner in fee simple.

These two deeds had not been placed on record at the time of the mortgages, and it is claimed, therefore, that the two mortgages executed by Isaac Augustus Clark alone, without his mother joining in them, and without her knowledge or consent, were valid and legal incumbrances on the land. This would be true as to the remainder interest but for the fact that Mrs. Toland was in actual possession and occupancy of the land, claiming the whole title by virtue of the unrecorded deeds. The court below found the fact to be that Doon knew of this actual possession when he took his mortgages, and found the law to be that this knowledge of her actual possession constituted actual notice of her title. That the mortgagers were bound, at their peril, before taking a mortgage from one not in possession, to ascertain from the occupant and possessor the extent of her claim of title.

This proposition of law is sustained by numerous authorities.

"When a person purchases or takes an incumbrance on real estate in the actual occupation of a third person, he is charged with notice of the interest of such third person, and he should communicate with such person and ascertain the particulars of his claims or interest, and from whom he holds."

Morrison vs. *March*, 4 Minn., 325.

"The general rule, established by a series of decisions in this State, is that the possession of the occupant of real estate is notice of his rights in the premises as against one who had purchased without exercising due diligence by making inquiry of the occupant as to the nature of his claim and interest."

Carlton College vs. *McNaughton*, 26 *Ib.*, 199.
Palmer vs. *Bates*, 22 *Ib.*, 332.

"Actual possession is notice of the possessor's title, and of the title of those under whom he holds."
Groff vs. *Remey*, 19 *Ib.*, 44.

To the same effect is the text in
Pomeroy's Equity, Secs. 597, 8 *et seq.*, and Sec. 616 (note 3), and 617.

This proposition is not seriously controverted by appellant's counsel, but they seek to avoid it on two grounds: First, that the Utah registration statutes repeal it, and second, that the possession was consistent with her recorded title of a life estate. As to the Utah statutes it seems sufficient to say that the lower court's construction that they are not destructive of, but only supplementary to, the old common law rule of notice by possession must be accepted as conclusive. Under the well established rule of this court the decisions of the local court as to the construction and effect of local statutes will not be reviewed on appeal.

As to the second, as stated by the court below in its opinion, "the authorities are both ways; the better doctrine is that an occupant's possession is actual notice of his full title in the premises, no difference what the record shows." It seems unnecessary to review the list of authorities cited by appellants' counsel to the contrary. Some of them depend on the various courts' constructions of their own local statutes, and none of them reach to a case like this where there was not only possession, but actual knowledge by the mortgagee of that possession. (See 8th Finding, Record, *p.* 68., Nor the case of mere intruders, like the appellants) who take up mortgages two months after they had *ac-*

tual notice that the occupant held deeds conveying to her the fee, (See 8th Finding, Record, p. 69) merely as an auxiliary towards acquiring a valuable property.

I may add that there is a third consideration offered in argument, by way of estoppel, to wit: that the appellee had united with her son in a mortgage of the land to Doon, subsequent to her unrecorded deeds. There the note was joint and the mortgage was joint, perhaps incidentally so. It is not pretended that this mortgage contained any recital, or that any representation was made *aliunde*, showing any interest in the son. Moreover there is no plea that the subsequent mortgages were taken from the son on the faith of this previous joint mortgage.

It is a familiar rule of equity as well as law, that an estoppel to be made available must be pleaded. It cannot be raised for the first time in argument.

The Facts as to Fraud.

The lower court's findings of facts, it is conceded, are conclusive, and must be accepted as the facts here.

The material ones are, as I have stated, that the appellants falsely represented that the land was subject to the son's mortgages to Doon and to appellants, and that she would lose her home, life estate and all unless she signed this deed; and that only by doing that could she save her house, which, as a matter of grace and kindness, they would move for her if she would sign. It is not contended that this was true as to the appellants' mortgages, for they had long since been released of record without any obligation or request on appellee's part. But because, as appellant's counsel state, the two Doon mortgages ought to be held good; and if so held, then there was no misrepresentation and consequently no fraud. This is ingenious, possibly plausi-

ble, but not sound. The representations are found to have gone, not only to these two mortgages, but to the two released mortgages of appellants, and to the wholly unwarranted pretense that they each and all affected her life estate, as well as her son's remainder interest. The claim that, because they may have told the truth as to the Doon mortgages, the finding that this was part of the fraud renders it unseverable from the other untrue assertions, is reduced to absurdity by the illustration that it would be equally tenable to contend that because the first Doon mortgage (the one signed by appellee) was valid, and was part of the representation, that this consideration is sufficient to uphold the whole transaction.

The truth in a nutshell is that the appellants succeeded, when appellee was liable only for $450.00, in getting from her a deed for property worth at its date at least $2,500.00 (See 12th Finding, Record, *p.*, 70), and which in four years, according to appellants present claim, grew to be worth $6,000.00.

Whatever view this court may take of the two Doon mortgages, we are satisfied it will grant no futher relief than to order them liens. But, under all the circumstances, we feel confident that it will hold that appellants took no equitable title to them, by his voluntary assumption and payment of them for his own purposes.

Should the court not dismiss for want of jurisdiction, or affirm as frivolous, we feel confident of an affirmance on the merits.

O. B. HALLAM,
Solicitor for Appellee.